

In The Matter Of:
INDIANA ENVIRONMENTAL RULES BOARD

November 18, 2020

*WILLIAM F. DANIELS, D/B/A ACCURATE REPORTING OF INDIANA
12922 BRIGHTON AVENUE
CARMEL, INDIANA 46032
317.848.0088
ACCURATEREPORTINGOFINDIANA@HOTMAIL.COM*

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BEFORE THE STATE OF INDIANA
ENVIRONMENTAL RULES BOARD

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PUBLIC MEETING OF NOVEMBER 18, 2020

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PROCEEDINGS

before the Indiana Environmental Rules Board,
Beverly Gard, Chairman, taken before me, Lindy L.
Meyer, Jr., a Notary Public in and for the State
of Indiana, County of Shelby, via Webex
Conference on Wednesday, November 18, 2020 at
1:33 o'clock p.m.

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William F. Daniels, RPR/CP CM d/b/a
ACCURATE REPORTING OF INDIANA
12922 Brighton Avenue
Carmel, Indiana 46032
(317) 848-0088

1 APPEARANCES:

2 BOARD MEMBERS:

3 Beverly Gard, Chairman
4 Angelique Collier
5 Paul Gilson
6 Dr. Ted Niemiec
7 Joanne Alexandrovich
8 Karen Valiquett
9 Ken Rulon
10 William Etzler
11 R. T. Green
12 Michael Schuler
13 Calvin Davidson
14 Dan Bortner
15 Jordan Seger
16 Bruno Pigott, IDEM Commissioner (nonvoting)

17 IDEM STAFF MEMBERS:

18 Chris Pedersen
19 Ryan Clem
20 Sarah Bonick
21 Jenny Acker
22 Seth Engdahl
23 Matt Stuckey
Keelyn Walsh
Dan Watts
Susan Bem
MaryAnn Stevens
Martha Clark Mettler
Jerry Dittmer
Paul Higginbotham
Nancy King
Karla Kindrick

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1 PUBLIC SPEAKERS:

- 2 Nysa Hogue
- 3 Bruce Stevens
- 4 Craig Williams
- 5 Mayor Dave Wood
- 6 Tim Healy

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1 1:33 o'clock p.m.
2 November 18, 2020

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3 CHAIRMAN GARD: I'm going to call the
4 Environmental Rules Board of November 18th, 2020
5 to order. It's about 1:34 p.m., and I think this
6 will probably be -- these Zoom meetings will
7 probably run for at least quite a few more
8 months, so I appreciate you all participating in
9 these.

10 The first thing I'm going to do is ask
11 Ryan Clem to go through the instructions, and I
12 know you've heard them before, but for any new
13 people that are on, go ahead, Ryan, give the
14 instructions for asking questions, submitting
15 questions and so forth.

16 MR. CLEM: Sure. Thank you, Chairman
17 Gard, and thanks, everybody, for joining us. My
18 name is Ryan Clem. I'm Communications Director
19 with IDEM. On the call or on the meeting also is
20 Sarah Bonick from IDEM Communications Office as
21 well, as I may need to step out for a bit, and
22 she'll be able to help you as well.

23 So, we will be taking questions and

1 comments from the public at today's meeting. If
2 you have a question or you have a technical issue
3 during the presentation, please use the raised
4 hand or chat feature in Zoom, and to access those
5 features, at the bottom or top of your screen
6 you'll see a menu bar.

7 In the middle of that menu there's a chat
8 icon which you click that will show the chat
9 dialogue. You can also see the raised hand
10 option there as well. So, please utilize both of
11 those options, either the raised hand or chat
12 features, if you have any questions or comments,
13 and you'll be called upon at the appropriate
14 time.

15 For those joining us by phone, if you have
16 a question or comment you can also raise your
17 hand by pressing star nine, and we'll call on
18 you. When called upon, you'll also need to
19 unmute your phone by pressing star six. For
20 everybody in today's meeting, please identify
21 yourself when speaking.

22 If any members of the media have joined
23 us, please utilize the chat feature or e-mail

1 media@idem.in.gov if you have any questions.

2 This meeting is being recorded, and will be
3 posted on IDEM's Web site in the next couple of
4 days.

5 And with that, I'll turn it back over to
6 you, Chairman Gard.

7 CHAIRMAN GARD: Okay. Thank you,
8 Ryan.

9 I will now call the roll of the Board.
10 Mr. Etzler?

11 (No response.)

12 CHAIRMAN GARD: You all are going to
13 have to unmute to respond to the roll call.

14 MR. ETZLER: Sorry; I was muted. I
15 am present.

16 CHAIRMAN GARD: I thought you were.
17 Dr. Niemiec?

18 DR. NIEMIEC: Present.

19 CHAIRMAN GARD: Ms. Valiquett?

20 MS. VALIQUETT: Present.

21 CHAIRMAN GARD: Mr. Wasky?

22 (No response.)

23 CHAIRMAN GARD: Mr. Davidson?

1 MR. DAVIDSON: Present as the new
2 normal allows.

3 (Laughter.)

4 CHAIRMAN GARD: Mr. Horn won't be
5 with us today.

6 Mr. Schuler?

7 MR. SCHULER: Present.

8 CHAIRMAN GARD: Ms. Collier?

9 MS. COLLIER: Present.

10 CHAIRMAN GARD: Mr. Green?

11 MR. GREEN: Present.

12 CHAIRMAN GARD: Mr. Bortner?

13 MR. BORTNER: Present.

14 CHAIRMAN GARD: Dr. Alexandrovich?

15 DR. ALEXANDROVICH: Present.

16 CHAIRMAN GARD: Comm. Pigott?

17 COMM. PIGOTT: Present.

18 CHAIRMAN GARD: Mr. Seger?

19 MR. SEGER: Present.

20 CHAIRMAN GARD: Mr. Rulon?

21 MR. RULON: Present.

22 CHAIRMAN GARD: Mr. Gilson?

23 MR. GILSON: Present.

1 CHAIRMAN GARD: And I am Beverly
2 Gard, Board Chair, present. So, we have more
3 than a quorum.

4 Our first order of business today is
5 approval of the summary of the September 9th,
6 2020 Board meeting. Are there any additions or
7 corrections to the summary as presented?

8 (No response.)

9 CHAIRMAN GARD: If not, I need a
10 motion to approve.

11 MR. RULON: So moved, Ken Rulon.

12 CHAIRMAN GARD: Is there a second?

13 MR. GREEN: Second.

14 CHAIRMAN GARD: And when you second a
15 motion or make a motion, say your name as well.
16 Who seconded that motion?

17 MR. GREEN: R. T. Green.

18 CHAIRMAN GARD: Okay. Thank you.
19 And as required by Zoom, since we aren't all in
20 the same location, I do have to call the roll
21 again.

22 Mr. Etzler?

23 (No response.)

1 CHAIRMAN GARD: Dr. Niemiec?

2 DR. NIEMIEC: Present?

3 CHAIRMAN GARD: No, these are yeses
4 or noes, for approving the minutes.

5 DR. NIEMIEC: Oh. Aye.

6 CHAIRMAN GARD: Ms. Valiquett?

7 MS. VALIQUETT: Aye.

8 CHAIRMAN GARD: Mr. Wasky?

9 (No response.)

10 CHAIRMAN GARD: Mr. Wasky?

11 (No response.)

12 CHAIRMAN GARD: Mr. Davidson?

13 MR. DAVIDSON: Yes.

14 CHAIRMAN GARD: Mr. Horn?

15 (No response.)

16 CHAIRMAN GARD: Mr. Schuler?

17 MR. SCHULER: Yes.

18 CHAIRMAN GARD: Ms. Collier?

19 MS. COLLIER: Yes.

20 CHAIRMAN GARD: Mr. Green?

21 MR. GREEN: Yes.

22 CHAIRMAN GARD: Mr. Bortner?

23 MR. BORTNER: Yes.

1 CHAIRMAN GARD: Dr. Alexandrovich?

2 DR. ALEXANDROVICH: Yes.

3 CHAIRMAN GARD: Mr. Seger?

4 MR. SEGER: Yes.

5 CHAIRMAN GARD: Mr. Rulon?

6 MR. RULON: Yes.

7 CHAIRMAN GARD: Mr. Gilson?

8 MR. GILSON: Yes.

9 CHAIRMAN GARD: And the Chair votes
10 aye. The minutes of the previous meeting are
11 approved.

12 Commissioner, it's your turn to give your
13 report. Comm. Pigott?

14 COMM. PIGOTT: Thank you, Madam
15 Chair. Again, I forgot to unmute myself.

16 First of all, I want to say thank you to
17 everyone who has taken the time to attend the
18 meeting today. I know there are a lot of items
19 on the agenda. We're happy you're all here.

20 I want to say thank you for Dan Bortner.
21 I'm a member of the Natural Resource Commission,
22 and Dan conducts a pretty darn good meeting over
23 at the Natural Resource Commission. It was just

1 yesterday that I was at that meeting, and it went
2 very smoothly, and I appreciate being a part of
3 that.

4 In terms of the work we're doing at IDEM,
5 first of all, it pays to know that as you can
6 probably see, many of us are still working from
7 home. I'm in the office more than I'm out, but I
8 am working from home, and most of the staff is
9 working from home and rotating in the office, and
10 we're being careful and making sure that not only
11 are people safe, but we're also doing the work
12 that we've been tasked with conducting.

13 We're issuing our permits as we have in
14 the past. We don't have a permit backlog, I'm
15 happy to report. We're tracking our permits not
16 only in terms of efficiency, but how many
17 applications come in the door and how many
18 permits are issued, and there has been a slowdown
19 in the applicant submissions in certain
20 permitting areas, but we continue to issue our
21 permits in a timely manner.

22 And one of the other areas that we work on
23 is compliance. Compliance inspections are

1 continuing. We're trying to be careful and
2 protect the folks that conduct the inspections;
3 therefore, the folks that we have going out and
4 conducting inspections are wearing the
5 appropriate PPE.

6 If there are problems at a facility, we
7 urge folks to get in touch with us so we can
8 reschedule inspections to make sure that we're
9 not putting anyone, ourselves or members of
10 industry that we're inspecting or municipalities,
11 at danger. And we find great cooperation in that
12 endeavor. So, we're continuing to do our
13 inspections. We're doing them remotely where
14 possible, but also in person, and we're finding
15 that most of our facilities are in compliance,
16 and we're happy to report that.

17 We do -- over the past several months, as
18 you all are aware, the state has, you know, at
19 various times had different levels of hunkering
20 down, and as a result, economic activity has
21 slowed down in parts of the state, both in terms
22 of sales tax revenues, but also income tax
23 revenues and other areas.

1 We are finding ourselves bouncing back,
2 but we still -- we're still finding that the
3 economy's not quite where it was, and as a
4 result, the State Budget Agency has asked
5 agencies across the Board to hold back 15 percent
6 of their income not only for this year, but also
7 for the next biennial budget, and that means that
8 we've been tightening our belts quite a bit.

9 We have a number of vacancies at the
10 agency, and we're being very judicious about
11 filling them. One of the vacancies that is
12 currently before us is the head of the Office of
13 Air Quality. Keith Baugues recently retired from
14 the Office of Air Quality, and we have received
15 approval to fill his position. We are working to
16 do that. We've gotten a pool of applicants and
17 we're going to begin the process of interviewing
18 candidates to fill that the position of the
19 Assistant Commissioner in the Office of Air
20 Quality.

21 At the same time, in the Office of Land
22 Quality, there is a Branch Chief position that
23 was just vacated, and we're sorry to lose one of

1 my good friends, Becky Joniskan, and Becky had
2 worked in the agency for quite some time and had
3 a vital role working with our ag folks and
4 working in the Office of Land Quality in a number
5 of issues. We're going to be working to fill
6 that position as well.

7 And we understand Joe Williams, the
8 Section Chief for the CFO program, will be
9 retiring, and we'll be looking to fill that
10 position.

11 There are other positions we'll be working
12 to fill as well, and we, as is necessary at this
13 time when we're in a budget crunch, are required
14 to justify each and every position with the State
15 Budget Agency and a committee of folks that are
16 known as the Strategic Hiring Committee. So,
17 we're working to put together requests for
18 filling those positions.

19 We're also working to hire a new
20 Controller. Our Controller of some years left
21 recently, and we're in end stages of interview
22 for that process. So, we've been shorthanded,
23 but we are working to continue the work that

1 we've been doing and measuring how well we're
2 doing it and whether we're having trouble meeting
3 the requirements.

4 I will say that the number of inspections
5 we've conducted over the last, oh, I don't know,
6 couple of -- few months has been reduced, and we
7 made commitments with U.S. EPA to conduct a
8 certain number of inspections in each of our
9 program areas.

10 I'm not sure that our state or any other
11 state will be able to meet that in the
12 traditional in-person inspection manner, so we as
13 well as other states will be talking to EPA about
14 the commitments we made and about, given the fact
15 that the COVID pandemic is the reason we haven't
16 met them, we'll be needing to have discussions
17 with them about adjusting their expectations of
18 states.

19 And so, at this time we continue to work
20 and conduct our inspections and do our permits,
21 and we expect that we'll continue to do so
22 despite being shorthanded in several areas, but
23 it's due to the good work of the folks at the

1 Department that we can meet the commitments in
2 terms of issuing permits and doing the other
3 work, including putting together this Board
4 meeting and the VW Committee meeting that we had
5 this morning.

6 So, that's my report for today, Chairman
7 Gard, and I'm happy to answer any questions that
8 folks may have.

9 CHAIRMAN GARD: Does anyone have a
10 question for the Commissioner?

11 (No response.)

12 CHAIRMAN GARD: Okay. Commissioner,
13 I guess not. Thank you very much.

14 COMM. PIGOTT: Thank you.

15 CHAIRMAN GARD: The next thing on the
16 agenda is a report on rulemaking by Chris
17 Pedersen.

18 MS. PEDERSEN: Good afternoon. I'm
19 Chris Pedersen, in the Rules Development Branch
20 of the Office of Legal Counsel.

21 We are anticipating that our next Board
22 meeting is going to be held on February 10th
23 of 2021, and at that meeting we anticipate

1 presenting some of the rules that are also before
2 the Board today, including the Marion County SO2
3 Redesignation Emergency Rule. We believe that
4 may need to be brought forward one more time
5 before the regular rulemaking is completed.

6 And also rules that are up for preliminary
7 adoption today. These include the NOx Emissions
8 Monitoring Rule, Vertellus Particulate Matter
9 Revisions Rule, Metals Criteria, and the
10 Hazardous Waste Financial Assurance Rule.

11 In addition to those, I wanted to give you
12 an update on two other rules that are in process.
13 As you are aware, sometimes the rulemakings that
14 are started take a long time to complete the
15 process, but right now there are two rulemakings
16 that were preliminarily adopted last year that
17 are not yet ready for final adoption, and I
18 wanted to provide you an update on those.

19 The first is the Septage Management rule.
20 This rule was preliminarily adopted in August
21 of 2019. It includes revisions to address
22 statutory changes and also adds phosphorus
23 testing and standards for the land application of

1 septage.

2 At the preliminary adoption hearing,
3 Dr. Alexandrovich asked for a clarification of
4 the terms "land application" and "surface
5 application" as they were used in the draft rule.
6 Surface application is a type of land application
7 in which a septage is placed on the surface of
8 the ground.

9 In reviewing the issue, legal staff
10 determined that surface application is not
11 allowed. This is based on a statutory definition
12 of "land application" at IC 13-11-2-114 that
13 requires septage to be buried or incorporated
14 into the soil. In preparing for removing surface
15 application from the proposed rule, IDEM program
16 staff contacted the affected parties to discuss
17 the change, and the rule writer worked with the
18 staff to revise the rule language.

19 The fiscal impact for this rule that must
20 be submitted to the State Budget Agency is almost
21 completed, and we expect to submit it soon. Once
22 we have some indication from the State Budget
23 Agency that the submittal can be approved, we

1 will schedule final adoption of the Septage
2 Management Rule to an upcoming Board meeting.

3 The second rule is a Waste Tire Rule.
4 This rule was preliminarily adopted in November
5 of 2019. It includes revisions to update the
6 existing waste tire management requirements, and
7 also adds requirements for the legitimate use of
8 waste tires.

9 IDEM submitted the fiscal impact analysis
10 to the State Budget Agency, which is a part of
11 the Office of Management and Budget, or OMB, on
12 October 16th the 2019. Since OMB had not seen
13 the draft rule language prior to our submittal of
14 the fiscal impact analysis, OMB decided to review
15 the proposed language prior to the fiscal review.

16 In addition to some requests for
17 clarification, almost all comments raised by OMB
18 are related to rule language that repeats and
19 clarifies statutory language rather than
20 referring to it by citation and other
21 rule-writing style revisions. There is no
22 indication that the State Budget Agency has begun
23 to review the fiscal impact analysis yet.

1 IDEM disagrees with the changes suggested
2 by -- or disagrees that the changes suggested by
3 OMB are necessary, and right now lacks the
4 considerable amount of staff time that would be
5 necessary to make these changes to the
6 preliminarily adopted rule. The Waste Tire Rule
7 will not be able to move forward until the issue
8 is resolved and the State Budget Agency reviews
9 and approves the fiscal impact analysis.

10 So, that's the update I wanted to give you
11 on those two rules since they had been before you
12 previously but had not yet come back for final
13 adoption. I'd be happy to answer any questions
14 that Board members may have about the rulemakings
15 before touching on the air permitting report as
16 my last item.

17 CHAIRMAN GARD: Thank you.

18 Are there any questions for Chris on the
19 things that she's covered?

20 (No response.)

21 CHAIRMAN GARD: I guess not, Chris.

22 MS. PEDERSEN: Okay. Then I just
23 wanted to mention, in the Board packets as you

1 get each year, there was a copy of the air
2 permitting report, and Jenny Acker, from the Air
3 Permits Branch, is available to answer any
4 questions if Board members have questions about
5 that report.

6 CHAIRMAN GARD: And thank you for
7 that report. That was -- that was a good report.

8 Are there any questions on the report?

9 (No response.)

10 CHAIRMAN GARD: Well, it's in your --
11 it was in your packet for today, so if you
12 haven't read it, I suggest you take a little time
13 and go through it. It's good.

14 Thank you.

15 MS. PEDERSEN: Thank you.

16 CHAIRMAN GARD: Today we have one
17 emergency rule that the Board will be asked to
18 adopt, Marion County SO2 Redesignation. In
19 addition, today we will have -- pardon me? Do
20 you have -- does somebody have a question for
21 Chris?

22 COMM. PIGOTT: I think someone must
23 have just -- they must have just pressed the

1 wrong button or something.

2 CHAIRMAN GARD: Yeah. All right.

3 In addition, today we will have hearings
4 and Board action on final adoption of the
5 following rules: Marion County SO2 and Muncie
6 Lead Redesignations; ArcelorMittal and NIPSCO SO2
7 Revisions; Cold Cleaning Decreasing Alternative;
8 Pharmaceuticals and Other Hazardous Waste
9 Updates; and Air Permit Fee Updates.

10 We will also have hearings and Board
11 actions on preliminary adoption of Vertellus
12 Particulate Matter Revisions; Hazardous Waste
13 Financial Assurance, NOx Emissions Monitoring; and
14 Metal Criteria.

15 After Board action on the rules, there
16 will be a Board discussion of the hearing on the
17 Citizen's Petition that we held on October
18 the 28th.

19 The rules are being considered today --
20 the rules being considered today at today's
21 meeting were included in Board packets and are
22 available for public inspection on the IDEM Web
23 site at least one week prior to each Board

1 meeting.

2 A written transcript of today's meeting
3 will be made. The transcript and any legal
4 submissions will be open for public inspection at
5 the Office of Legal Counsel. A copy of the
6 transcript will be posted on the pages of the
7 agency Web site when it becomes available.

8 The Board will now consider adoption of an
9 emergency rule to revise 326 IAC 1-4-50 to
10 redesignate three townships in Marion County to
11 attainment for the 2010 sulfur dioxide National
12 Ambient Air Quality Standard. The draft
13 emergency rule found in today's Board packet is
14 entered into the record of the meeting.

15 Seth Engdahl will present the rule to the
16 Board.

17 MR. ENGDAHL: Members of the Board,
18 good afternoon. My name is Seth Engdahl, and I'm
19 a rule writer in the Rules Development Branch
20 within IDEM's Office of Legal Counsel.

21 The emergency rule currently under
22 consideration would temporarily supersede
23 326 IAC 1-4-50. This section is comprised of an

1 attainment status table for certain air
2 pollutants in Marion County. The only change we
3 made is the status of Center, Perry and Wayne
4 Townships, which is being changed from
5 nonattainment to attainment for the 2010 one-hour
6 primary sulfur dioxide National Ambient Air
7 Quality Standard. We are making this change to
8 maintain consistency with the federal designation
9 that was published in the Federal Register on
10 May 21st of this year.

11 This emergency rule was most recently
12 adopted on September 9th of this year. Today,
13 the Board will also be considering adoption of
14 the regular rulemaking to incorporate these and
15 other changes into the Indiana Administrative
16 Code. However, due to the statutorily required
17 waiting periods before a rule's effectiveness,
18 IDEM is requesting that the Board approve this
19 emergency rule as well, so that the attainment
20 status table found at 326 IAC 1-4-50 will remain
21 current and accurate until the regular rulemaking
22 is effective.

23 IDEM requests that the Board approve this

1 emergency rule as presented, and I'm happy to
2 answer any questions that you may have.

3 CHAIRMAN GARD: Are there any
4 questions for Seth on the rule?

5 (No response.)

6 CHAIRMAN GARD: If not, is there a
7 motion to be made to adopt the emergency rule?

8 MS. COLLIER: So moved, Angelique
9 Collier.

10 DR. ALEXANDROVICH: Second --

11 CHAIRMAN GARD: Is there a --

12 DR. ALEXANDROVICH: -- Joanne
13 Alexandrovich.

14 CHAIRMAN GARD: I'm going to call the
15 roll, and you might go ahead and unmute so we can
16 get through this quickly.

17 Mr. Etzler?

18 MR. ETZLER: Yes.

19 CHAIRMAN GARD: Dr. Niemiec?

20 DR. NIEMIEC: Yes.

21 CHAIRMAN GARD: Ms. Valiquett?

22 MS. VALIQUETT: Yes.

23 CHAIRMAN GARD: Mr. Wasky?

1 (No response.)

2 CHAIRMAN GARD: Mr. Davidson?

3 MR. DAVIDSON: Yes.

4 CHAIRMAN GARD: Mr. Schuler?

5 MR. SCHULER: Yes.

6 CHAIRMAN GARD: Ms. Collier?

7 (No response.)

8 CHAIRMAN GARD: Ms. Collier?

9 MS. COLLIER: Yes.

10 CHAIRMAN GARD: Mr. Green?

11 MR. GREEN: Yes.

12 CHAIRMAN GARD: Mr. Bortner?

13 MR. BORTNER: Yes.

14 CHAIRMAN GARD: Dr. Alexandrovich?

15 DR. ALEXANDROVICH: Yes.

16 CHAIRMAN GARD: Mr. Seger?

17 MR. SEGER: Yes.

18 CHAIRMAN GARD: Mr. Rulon?

19 MR. RULON: Yes.

20 CHAIRMAN GARD: Mr. Gilson?

21 MR. GILSON: Yes.

22 CHAIRMAN GARD: And the Chair votes

23 aye. So, the preliminary rule is adopted by a

1 vote of 12 -- 12 to nothing.

2 This is a public hearing before the
3 Environmental Rules Board of the State of Indiana
4 concerning final adoption of amendments to rules
5 at 326 IAC 1-4-19 and 326 IAC 1-4-50, revisions
6 of the Designation Status Tables for SO2 in Marion
7 County and Lead in the Muncie Area of Delaware
8 County. The draft rule found in today's Board
9 packet is entered into the record of the hearing.

10 Seth Engdahl will present the rule to the
11 Board.

12 MR. ENGDAHL: Good afternoon again.
13 My name is Seth Engdahl. I'm a rule writer in
14 the Rules Development Branch within IDEM's Office
15 of Legal Counsel.

16 The rulemaking currently under
17 consideration would amend two status tables found
18 at 326 IAC 1-4-19 and 326 IAC 1-4-50, in order to
19 properly align the Indiana Administrative Code
20 with new federal designations that were published
21 in the Federal Register in May of this year.

22 Specifically, on May 15th, the United
23 States Environmental Protection Agency

1 redesignated a portion of the City of Muncie from
2 nonattainment to attainment with regard to the
3 National Ambient Air Quality Standards for lead.
4 Subsequently, on May 21st, the United States
5 Environmental Protection Agency also redesignated
6 Center, Perry, and Wayne Townships in Marion
7 County from nonattainment to attainment with
8 regard to the National Ambient Air Quality
9 Standards for sulfur dioxide.

10 Accordingly, IDEM requests that the Board
11 approve this rulemaking so that the Indiana
12 Administrative Code properly reflects the correct
13 federal designations. The Board has already
14 approved emergency rules that temporary altered
15 the designation status for the three
16 aforementioned townships Marion County. This
17 rulemaking will make permanent those changes, in
18 addition to codifying the new attainment status
19 for portions of the City of Muncie with regard to
20 lead.

21 IDEM requests that the Board approve this
22 rule as presented, and I'm happy to answer any
23 questions that you may have.

1 CHAIRMAN GARD: Thank you.

2 Is there anyone that is signed up to speak
3 on this? We don't have any -- well, we wouldn't
4 have cards, but nobody raised their hand?

5 MR. ENGDAHL: No, I don't see anyone.

6 CHAIRMAN GARD: Okay. The hearing is
7 concluded. The Board will now consider final
8 adoption of amendments to 326 IAC 1-4-19 and
9 326 IAC 1-4-50, revisions of the designation
10 status of SO2 in Marion County, and lead in the
11 Muncie area of Delaware County.

12 Is there Board discussion?

13 COMM. PIGOTT: Sen. Gard, I just
14 wanted to say that this -- this series of
15 rulemakings are extremely good news for the State
16 of Indiana, and, you know, we, for decades,
17 worked really hard to make sure that the air
18 quality in our state improves, and really, the
19 rulemakings that we're passing today, the
20 emergency rules and everything, is a testament to
21 the work of the industries, the municipalities
22 and the agency in terms of making concerted
23 efforts to be in attainment with the National

1 Ambient Air Quality Standards.

2 And while we might read in the paper that
3 the standards -- I mean that the air quality is
4 not as good, this is a testament to factually
5 that things have improved, and I just thought it
6 would bear mentioning that this is a really good
7 outcome, and I'm very proud of everyone for the
8 work that's been done to make sure that our air
9 quality is better than ever.

10 Thank you.

11 CHAIRMAN GARD: Well, thank you. And
12 I have a question, Commissioner: Over what time
13 period were the measurements taken to arrive at
14 the meth test?

15 COMM. PIGOTT: Well, I'll generally
16 answer, and I think Scott Deloney or Matt Stuckey
17 will rescue me when I say everything incorrectly,
18 and in order to be redesignated into attainment
19 or to be able to apply to EPA for this, you have
20 to have three years of data that indicates that
21 the air quality meets the National Ambient Air
22 Quality Standards.

23 And Matt seems to be nodding his head

1 "Yeah, that sounds close to being right," so I
2 think I've got that correct, which is a
3 testament, again, that things aren't just
4 temporarily improving, it's not just one
5 measurement, it's a continued meeting of the
6 standard that we need to demonstrate before EPA
7 will consider putting things back into
8 attainment.

9 Matt, anything else I need to say about
10 that?

11 MR. STUCKEY: No, I mean just on top
12 of that, not only the three years of clean data,
13 but a plan that shows that we will not only
14 achieve -- consistently achieve the standard, but
15 that we'll be able to maintain it over future
16 years.

17 So, I mean I think it's just -- we've
18 demonstrated that we comply, and we can
19 demonstrate that we will continue to comply and
20 meet those standards or, you know, make sure that
21 our monitor shows that we're below those
22 standards.

23 So, yeah, it's a lot of hard work and a

1 lot of work that Scott's group does to prepare
2 those plans and do all of the modeling and
3 monitoring data, collecting and evaluating, to
4 get to this point.

5 CHAIRMAN GARD: Thank you.

6 Anybody else have questions?

7 (No response.)

8 CHAIRMAN GARD: Any Board discussion?

9 (No response.)

10 CHAIRMAN GARD: Is there a motion to
11 adopt IDEM's -- and this is the final adoption --
12 of the rules as presented?

13 DR. ALEXANDROVICH: Joanne
14 Alexandrovich moves to final adoption.

15 CHAIRMAN GARD: Is there a second?

16 MR. RULON: Second, Ken Rulon.

17 CHAIRMAN GARD: I'll do a roll call.

18 Mr. Etzler?

19 MR. ETZLER: Yes.

20 CHAIRMAN GARD: Dr. Niemiec?

21 DR. NIEMIEC: Yes.

22 CHAIRMAN GARD: Ms. Valiquett?

23 MS. VALIQUETT: Yes.

1 CHAIRMAN GARD: Mr. Davidson?

2 MR. DAVIDSON: Yes.

3 CHAIRMAN GARD: Mr. Schuler?

4 MR. SCHULER: Yes.

5 CHAIRMAN GARD: Ms. Collier?

6 MS. COLLIER: Yes.

7 CHAIRMAN GARD: Mr. Green?

8 MR. GREEN: Yes.

9 CHAIRMAN GARD: Mr. Bortner?

10 MR. BORTNER: Yes.

11 CHAIRMAN GARD: Dr. Alexandrovich?

12 DR. ALEXANDROVICH: Yes.

13 CHAIRMAN GARD: Mr. Seger?

14 MR. SEGER: Yes.

15 CHAIRMAN GARD: Mr. Rulon?

16 MR. RULON: Yes.

17 CHAIRMAN GARD: Mr. Gilson?

18 MR. GILSON: Yes.

19 CHAIRMAN GARD: And the Chair votes
20 aye. The motion passes. The rule is adopted 12
21 to 0.

22 This is a public hearing before the
23 Environmental Rules Board of the State of Indiana

1 concerning final adoption of amendments to
2 326 IAC 7-4-14; 326 IAC 7-4.1-10, and
3 326 IAC 7-4.1-11, ArcelorMittal and NIPSCO SO2
4 Revisions. The draft rule found in today's Board
5 packet is entered into the record of the hearing.

6 Keelyn Walsh will present the rule to the
7 Board.

8 MS. WALSH: Good afternoon, members
9 of the Board, I'm Keelyn Walsh, with the Rules
10 Development Section of the Office of Legal
11 Counsel, and I am presenting today Rule
12 No. 20-449, ArcelorMittal and NIPSCO Sulfur
13 Dioxide Emission Limit Revisions, for your
14 consideration.

15 This rulemaking incorporates revisions to
16 the sulfur dioxide limits contained in
17 326 IAC 7-4-14, 7-4.1 -- or excuse me --
18 7-4.1-10, and 7-4.1-11 for emissions units at
19 three ArcelorMittal steel mills, and removes
20 alternative SO2 limits and emission units that
21 have already been permanently shut down. These
22 changes reflect the conditions in both a
23 settlement agreement and a consent decree between

1 ArcelorMittal, IDEM and U.S. EPA.

2 In addition to amending the SO2 emission
3 limits for the ArcelorMittal settlement agreement
4 and consent decree, IDEM is removing Boilers 7
5 and 8 at 326 IAC 7-4-14 for the Northern Indiana
6 Public Service Company Bailly Station to reflect
7 that these boilers have been permanently retired
8 and taken out of the facility's Title V permit.

9 The ArcelorMittal settlement agreement
10 between the parties was filed in the United
11 States Court of Appeals for the Seventh Circuit,
12 Appeal No. 14-1412, on November 12th, 2019. A
13 settlement agreement implements a site-specific
14 revision to the ArcelorMittal Burns Harbor LLC SO2
15 emission limits at 326 IAC 7-4-14 by revising
16 certain SO2 limits and adding a specified blast
17 furnace gas sampling and analysis protocol.

18 Additional revisions to the SO2 emissions
19 limits include establishing current limits for
20 the blast furnace flare and listing several
21 emission units as permanently shut down within
22 the facility. These updates to 326 IAC 7-4-14
23 and the addition of the blast furnace gas testing

1 protocol will satisfy the terms of settlement
2 agreement.

3 The ArcelorMittal consent decree between
4 the parties was filed in the United States
5 District Court for the Northern District of
6 Indiana, Hammond Division, on April 1st, 2020.
7 The consent decree revises ArcelorMittal's SO2
8 limits for Indiana Harbor West at
9 326 IAC 7-4.1-10 and Indiana Harbor East at
10 326 IAC 7-4.1-11 in Lake County.

11 Specific changes to these facilities
12 include revising furnaces at Indiana Harbor West
13 as burning natural gas only, and revising the No.
14 7 furnace interim and final SO2 limits at Indiana
15 Harbor East, as well as revising the calculation
16 for the hourly SO2 emission rate. The adoption of
17 the revised SO2 emissions limits for these two
18 facilities, as well as the revised SO2 hourly
19 emission rate for Indiana Harbor East, will
20 satisfy the terms of the consent decree.

21 IDEM requests that the Board final adopt
22 this rule as presented, and program staff are
23 available to answer any further questions you may

1 have.

2 Thank you.

3 CHAIRMAN GARD: Is there anyone
4 signed up to speak? Raise your hand, the little
5 icon.

6 (No response.)

7 CHAIRMAN GARD: No one?

8 MR. CLEM: No, ma'am.

9 CHAIRMAN GARD: Hearing -- yes?

10 MR. CLEM: No, there's -- I don't see
11 any hands raised or anybody in the chat.

12 CHAIRMAN GARD: Okay. Thank you.

13 The hearing is concluded. The Board will
14 now consider final adoption of amendments to
15 326 IAC 7-4-14, 326 IAC 7-4.1-10, and
16 326 IAC 7-4.1-11, ArcelorMittal and NIPSCO SO2
17 Revisions.

18 Is there any Board discussion?

19 (No response.)

20 CHAIRMAN GARD: If not, I need a
21 motion to final adopt the rules as presented.

22 MR. DAVIDSON: So moved, Cal
23 Davidson.

1 CHAIRMAN GARD: Is there a second?

2 MS. COLLIER: Second --

3 MR. ETZLER: Second.

4 MS. COLLIER: -- Angelique Collier.

5 CHAIRMAN GARD: Roll call.

6 Mr. Etzler?

7 MR. ETZLER: Yes.

8 CHAIRMAN GARD: Dr. Niemiec?

9 DR. NIEMIEC: Yes.

10 CHAIRMAN GARD: Ms. Valiquett?

11 MS. VALIQUETT: Yes.

12 CHAIRMAN GARD: Mr. Davidson?

13 MR. DAVIDSON: Yes.

14 CHAIRMAN GARD: Mr. Horn?

15 (No response.)

16 CHAIRMAN GARD: Mr. Schuler?

17 MR. SCHULER: Yes.

18 CHAIRMAN GARD: Ms. Collier?

19 MS. COLLIER: Yes.

20 CHAIRMAN GARD: Mr. Green?

21 MR. GREEN: Yes.

22 CHAIRMAN GARD: Mr. Bortner?

23 MR. BORTNER: Yes.

1 CHAIRMAN GARD: Dr. Alexandrovich?

2 DR. ALEXANDROVICH: Yes.

3 CHAIRMAN GARD: Mr. Seger?

4 MR. SEGER: Yes.

5 CHAIRMAN GARD: Mr. Rulon?

6 MR. RULON: Yes.

7 CHAIRMAN GARD: Mr. Gilson?

8 MR. GILSON: Yes.

9 CHAIRMAN GARD: And the Chair votes
10 aye. The rules are adopted 12 to 0.

11 This is a public hearing before the
12 Environmental Rules Board of the State of Indiana
13 concerning final adoption of amendments to rules
14 at 326 IAC 8-3, Cold Cleaner Degreasing
15 Alternative Rules. The proposed rule as
16 preliminarily adopted found in today's Board
17 packet is entered into the record of the hearing.

18 Keelyn Walsh will present the rule to the
19 Board.

20 MS. WALSH: Good afternoon once
21 again. I'm Keelyn Walsh, and I'm presenting Rule
22 No. 18-542, Cold Cleaning Degreasing Alternative,
23 for your consideration.

1 Cold cleaning is one of four types of
2 degreasing operations in which industrial sources
3 dip or spray machinery parts with a solvent.
4 Emissions of volatile organic compounds occur as
5 a result of evaporation from the storing and
6 handling of fresh and spent solvents. U.S. EPA
7 regulates VOC emissions in the Code of Federal
8 Regulations under the National Emission Standards
9 for Hazardous Air Pollutants at 40 CFR 63, and
10 ground level ozone under National Ambient Air
11 Quality Standards at 40 CFR 50.

12 Indiana's currently state rule at
13 326 IAC 8-3-8 require sources operating cold
14 cleaner degreasers to utilize a low vapor
15 pressure solvent for cleaning or degreasing
16 machine parts. The current rule does not provide
17 an option for sources to use a higher vapor
18 pressure solvent with a control device. However,
19 at low vapor pressure, solvents do not clean well
20 in certain situations such as the printing
21 industry, and they can contaminate print ink and
22 cause loss of products.

23 IDEM is proposing to amend 326 IAC 8-3-1,

1 8-3-2, 8-3-3, 8-3-4, and 8-3-8 to allow for the
2 use of an alternative control device for solvents
3 with a higher vapor pressure, in order to control
4 emissions from cold cleaning degreasing
5 activities for users currently required to use a
6 low vapor pressure solvent to comply with the
7 state rule. These amendments are consistent with
8 U.S. EPA regulations and will ensure smoother and
9 more efficient operations for industrial sources
10 in the state.

11 Additional changes to the rule language
12 include updating language in each section to
13 ensure rule clarity and consistency and exempting
14 spray gun cleaners at 326 IAC 8-3-1 from the
15 control equipment, operating, and material
16 requirements of cold cleaner degreasers. Spray
17 gun cleaners are not considered to be cold
18 cleaner degreasers because they are a flushing
19 system that are not used to clean parts and are
20 not immersed in solvent.

21 IDEM requests that the Board final adopt
22 this rule as presented, and program staff are
23 available to answer any further questions you may

1 have.

2 Thank you.

3 CHAIRMAN GARD: Is there anyone here
4 that has signed up to speak?

5 (No response.)

6 CHAIRMAN GARD: Anyone else want to
7 speak to this rule?

8 MR. CLEM: I don't see anybody on
9 here.

10 CHAIRMAN GARD: Well, the hearing is
11 concluded. The Board will now consider final
12 adoption of amendments to 326 IAC 8-3, Cold
13 Cleaner Degreasing Alternative Rules.

14 Is there any Board discussion?

15 (No response.)

16 CHAIRMAN GARD: A motion should be
17 made to adopt IDEM's final rules as presented.

18 MR. GREEN: This is R. T. Green. I
19 so move.

20 CHAIRMAN GARD: Is there a second?

21 MR. DAVIDSON: Second, Cal Davidson.

22 CHAIRMAN GARD: I'll call the roll.

23 Mr. Etzler?

1 MR. ETZLER: Yes.

2 CHAIRMAN GARD: Dr. Niemiec?

3 DR. NIEMIEC: Yes.

4 CHAIRMAN GARD: Ms. Valiquett?

5 MS. VALIQUETT: Yes.

6 CHAIRMAN GARD: Mr. Davidson?

7 MR. DAVIDSON: Yes.

8 CHAIRMAN GARD: Mr. Schuler?

9 MR. SCHULER: Yes.

10 CHAIRMAN GARD: Ms. Collier?

11 MS. COLLIER: Yes.

12 CHAIRMAN GARD: Mr. Green?

13 MR. GREEN: Yes.

14 CHAIRMAN GARD: Mr. Bortner?

15 MR. BORTNER: Yes.

16 CHAIRMAN GARD: Dr. Alexandrovich?

17 DR. ALEXANDROVICH: Yes.

18 CHAIRMAN GARD: Mr. Seger?

19 MR. SEGER: Yes.

20 CHAIRMAN GARD: Mr. Rulon?

21 MR. RULON: Yes.

22 CHAIRMAN GARD: Mr. Gilson?

23 MR. GILSON: Yes.

1 CHAIRMAN GARD: And the Chair votes
2 aye. The rules are adopted 12 to 0.

3 This is a public hearing before the
4 Environmental Rules Board of the State of Indiana
5 concerning final adoption of amendments to rules
6 at 329 IAC 3.1, Pharmaceuticals and Other
7 Hazardous Waste Updates. The proposed rule as
8 preliminarily adopted found in today's Board
9 packet is entered into the record of the hearing.

10 Dan Watts will present the rule to the
11 Board.

12 MR. WATTS: Thank you, Chairwoman
13 guards. Good afternoon, members of the Board.
14 I'm Dan Watts of the Rules Development Branch,
15 and I'm presenting LSA Document 20-204 for final
16 adoption. This rulemaking updates the Hazardous
17 Waste Rules in 329 IAC 3.1 with the incorporation
18 by reference of recently promulgated federal
19 hazardous waste rules, and also makes
20 improvements and corrections to the rule
21 language.

22 As a component of administering an
23 authorized hazardous waste program, IDEM must

1 maintain requirements that are consistent with
2 and no less stringent than the federal hazardous
3 waste requirements. IDEM is proposing to
4 incorporate recent federal hazardous waste rules
5 that include management standards for hazardous
6 waste pharmaceuticals, safe management of
7 recalled airbags, and the addition of aerosol
8 cans to the universal waste rules.

9 Also proposed for adoption are the
10 requirements at 40 CFR 262 -- 260.2(c) and (d),
11 which are associated with previously adopted
12 federal rules but not included in the original
13 incorporation by preference. Changes in EPA
14 guidance for the state adoption of the federally
15 administered provisions in 40 CFR 260.2 prompted
16 the adoption of the requirements at this later
17 date.

18 No changes have been made to the proposed
19 rule since preliminary adoption and
20 representatives from IDEM are available to answer
21 questions you may have for this rulemaking. The
22 Department requests that the Board adopt this
23 rule so Indiana's authorized hazardous waste

1 program can be consistent with current hazardous
2 waste rules for the affected waste streams and
3 industry sectors.

4 Thank you.

5 CHAIRMAN GARD: Is there anyone who
6 wishes to speak on the rule?

7 (No response.)

8 CHAIRMAN GARD: If not, this hearing
9 is concluded. The Board will now consider final
10 adoption of amendments to 326 IAC 3-1,
11 Pharmaceuticals and other Hazardous Waste
12 Updates. Motion needs to be made to adopt IDEM's
13 final adoption -- to final adopt the rules as
14 presented.

15 MR. BORTNER: So moved, Madam Chair,
16 Dan Bortner.

17 CHAIRMAN GARD: Is there a second?

18 MR. RULON: Second, Ken Rulon.

19 CHAIRMAN GARD: I'll call the roll.

20 Mr. Etzler?

21 MR. ETZLER: Yes.

22 CHAIRMAN GARD: Dr. Niemiec?

23 DR. NIEMIEC: Yes.

1 CHAIRMAN GARD: Ms. Valiquett?

2 MS. VALIQUETT: Yes.

3 CHAIRMAN GARD: Mr. Davidson?

4 MR. DAVIDSON: Yes.

5 CHAIRMAN GARD: Mr. Schuler?

6 MR. SCHULER: Yes.

7 CHAIRMAN GARD: Ms. Collier?

8 MS. COLLIER: Yes.

9 CHAIRMAN GARD: Mr. Green?

10 MR. GREEN: Yes.

11 CHAIRMAN GARD: Mr. Bortner?

12 MR. BORTNER: Yes.

13 CHAIRMAN GARD: Dr. Alexandrovich?

14 DR. ALEXANDROVICH: Yes.

15 CHAIRMAN GARD: Mr. Seger?

16 MR. SEGER: Yes.

17 CHAIRMAN GARD: Mr. Rulon?

18 MR. RULON: Yes.

19 CHAIRMAN GARD: Mr. Gilson?

20 MR. GILSON: Yes.

21 CHAIRMAN GARD: And the Chair votes

22 aye. The rule is final adopted 12 to 0.

23 This is a public hearing before the

1 Environmental Rules Board of the State of Indiana
2 concerning final adoption of amendments to rules
3 at 326 IAC 2-1.1-7, Air Permit Fees. The
4 proposed rule as preliminarily adopted found in
5 today's Board packet is entered into the record
6 of the hearing.

7 Seth Engdahl will present the Board -- the
8 rule to the Board.

9 MR. ENGDAHL: Thank you. Members of
10 the Board, good afternoon again. My name is Seth
11 Engdahl, and I am a rule writer in the Rules
12 Development Branch within IDEM's Office of Legal
13 Counsel.

14 The rule currently under consideration
15 would amend 326 IAC 2-1.1-7 so that the fees
16 contained in this rule accurately reflect the fee
17 amounts currently being collected by IDEM. This
18 rule was preliminarily adopted at the last Board
19 meeting on September 9th.

20 As a refresher, on August 14th, 2019, the
21 Environmental Rules Board approved a 27-percent
22 increase in the fees associated with the Title V
23 Air Permit Program. This action was in response

1 to a statutory mandate that was included in
2 Public Law 19-250 that directed the Board to
3 increase Title V Air Permit fees to cause an
4 aggregate fee revenue to be two million dollars
5 greater than the aggregate fee revenue that was
6 received by the agency during the year preceding
7 the increase.

8 IDEM began collecting the fees at the
9 increased level in January of this year. This
10 rulemaking would simply alter the fee amounts and
11 the table found at 326 IAC 2-1.1-7 so that they
12 properly reflect the fees actually being charged
13 and collected by the agency. This rule makes
14 minor stylistic changes and corrections to the
15 rule as well.

16 IDEM requests that the Board approve this
17 rule as presented, and I am happy to answer any
18 questions that you would have.

19 CHAIRMAN GARD: Is there anyone there
20 that would like to speak to the rule, proposed
21 rule?

22 (No response.)

23 CHAIRMAN GARD: If not, the hearing

1 is concluded. The Board will now consider final
2 adoption of amendments to 326 IAC 2-1.1-7, Air
3 Permit Fees Update.

4 Is there any Board discussion or
5 questions?

6 (No response.)

7 CHAIRMAN GARD: If not, a motion
8 needs to be made to final adopt the rules as
9 presented.

10 (No response.)

11 CHAIRMAN GARD: Do I hear a --

12 MR. GREEN: This is R. T. Green. I
13 so move.

14 CHAIRMAN GARD: Is there a second?

15 MS. VALIQUETT: Second. This is
16 Karen Valiquett.

17 CHAIRMAN GARD: I'll call the roll.

18 Mr. Etzler?

19 MR. ETZLER: Yes.

20 CHAIRMAN GARD: Dr. Niemiec?

21 DR. NIEMIEC: Yes.

22 CHAIRMAN GARD: Ms. Valiquett?

23 MS. VALIQUETT: Yes.

1 CHAIRMAN GARD: Mr. Davidson?

2 MR. DAVIDSON: Yes.

3 CHAIRMAN GARD: Mr. Schuler?

4 MR. SCHULER: Yes.

5 CHAIRMAN GARD: Ms. Collier?

6 MS. COLLIER: Yes.

7 CHAIRMAN GARD: Mr. Green?

8 MR. GREEN: Yes.

9 CHAIRMAN GARD: Mr. Bortner?

10 MR. BORTNER: Yes.

11 CHAIRMAN GARD: Dr. Alexandrovich?

12 DR. ALEXANDROVICH: Yes.

13 CHAIRMAN GARD: Mr. Seger?

14 MR. SEGER: Yes.

15 CHAIRMAN GARD: Mr. Rulon?

16 MR. RULON: Yes.

17 CHAIRMAN GARD: Mr. Gilson?

18 MR. GILSON: Yes.

19 CHAIRMAN GARD: And the Chair votes
20 aye. The rule is final adopted 12 to 0.

21 This is a public hearing before the
22 Environmental Rules Board of the State of Indiana
23 concerning preliminary adoption of amendments to

1 rules at 326 IAC 6-5-6-3 -- that must be 3 -- is
2 it 3-1, or is it really 31? I guess it's 31.

3 MS. WALSH: It should be 31; sorry
4 about that.

5 CHAIRMAN GARD: Okay. Vertellus
6 Particulate Matter Revisions. The draft rule
7 found in today's Board packet is entered into the
8 record of the hearing.

9 Keelyn -- Keelyn Walsh will present the
10 rule to the Board.

11 MS. WALSH: Good afternoon once
12 again. I'm Keelyn Walsh, and I am presenting
13 Rule No. 19-82, Vertellus Emission Limits Update,
14 for your consideration.

15 Vertellus is a chemical manufacturing
16 company in Indianapolis, Indiana, and has
17 requested revisions to its particulate matter
18 emission limits based -- listed at
19 326 IAC 6.5-6-31. These revisions are to remove
20 units that are no longer operating or have been
21 demolished at the facility, make changes to
22 particulate matter emission limits on other units
23 impacted by U.S. EPA's recently adopted Sulfur

1 Dioxide Limits at 326 IAC 7-4-2.1(a)(4), update
2 existing language, and add new language
3 pertaining to types of gases burned in certain
4 units.

5 Marion County's one-hour SO₂ monitoring
6 data was found to exceed the one-hour National
7 Ambient Air Quality Standard of 75 parts per
8 billion for the period between 2010 through 2012,
9 and the county was consequently designated as
10 nonattainment by the U.S. EPA. The 2010 one-hour
11 SO₂ limits were incorporated into Indiana's State
12 Implementation Plan on January 1st, 2017, and
13 therefore, revisions are required for some
14 sources listed at 326 IAC 7-4-2.1 in order to
15 demonstrate attainment of the new one-hour
16 standard.

17 Additionally, petroleum oil was burned at
18 several Vertellus units, which helped contribute
19 to monitored violations of the one-hour SO₂
20 standard in Marion County. These units have
21 since switched to burning natural gas, which
22 reduces SO₂ emissions and allow Vertellus to
23 remain in compliance with its revised SO₂ limits

1 to ensure continued attainment of the one-hour SO₂
2 standards. Revisions to the particulate matter
3 emission limits at 326 IAC 6.5-6-31 are needed
4 for consistency with the process changes that
5 Vertellus has made to comply with the new
6 standards.

7 Finally, language is being added at
8 326 IAC 6.5-6-31(b) (2) to indicate that certain
9 units burn both natural and landfill gases.
10 Increases in several emission limits represent
11 adjustments in the potential amount of natural
12 gas a unit can burn rather than the actual amount
13 of gas burned, and modeling has shown no
14 increased emission concentrations at the model
15 receptors.

16 Vertellus anticipates that switching from
17 petroleum fuels to natural gas, as well as
18 reducing the amount of landfill gas burned, will
19 result in an emissions decrease of 14.1 tons per
20 year as compared to the amount currently listed
21 in Indiana's SIP, and allow the area to
22 demonstrate attainment of U.S. EPA's National
23 Ambient Air Quality Standards. Once the

1 revisions in this rulemaking are completed, IDEM
2 will submit the final rule to U.S. EPA as a SIP
3 revision.

4 IDEM requests that the Board preliminarily
5 adopt this rule as presented, and program staff
6 are available to answer any further questions you
7 may have.

8 Thank you.

9 CHAIRMAN GARD: Are there any people
10 that would wish to speak to this rule?

11 (No response.)

12 CHAIRMAN GARD: If not, the hearing
13 is concluded. The Board will now consider
14 preliminary adoption of amendments to
15 326 IAC 6.5-6-31, Vertellus Particulate Matter
16 Revisions.

17 Is there any Board discussion?

18 DR. ALEXANDROVICH: I do have a
19 question, Madam Chair. Joanne.

20 CHAIRMAN GARD: Yes.

21 DR. ALEXANDROVICH: I'm curious. If
22 they're going to burn less natural gas --
23 landfill gas, what's happening to landfill gas?

1 Is it being burned somewhere else? Is it being
2 gassed into the atmosphere? It seems like, you
3 know, it's a good thing to collect landfill gas,
4 so I'm just wondering what that is all about.

5 MS. ACKER: Well, this is Jenny
6 Acker. I'm the Air Permits Branch Chief.

7 I don't know if Vertellus had some units
8 that were capable of combusting landfill gas or
9 not prior to this, but it's -- landfill gas is
10 never exhausted into the atmosphere. It's
11 typically combusted in a unit if a unit's capable
12 of doing it, or it's cleared off.

13 DR. ALEXANDROVICH: Thank you. That
14 answers my question.

15 MS. ACKER: You're welcome.

16 CHAIRMAN GARD: Cal, do you have
17 anything to add to that?

18 MR. DAVIDSON: I don't. I had the
19 similar curiosity. I appreciate the explanation.

20 CHAIRMAN GARD: Okay.

21 Any other comments or questions?

22 (No response.)

23 CHAIRMAN GARD: We need a motion to

1 preliminarily adopt the rules.

2 MR. DAVIDSON: So moved, Cal
3 Davidson.

4 CHAIRMAN GARD: Is there a second?

5 MR. GREEN: This is R. T. Green. So
6 moved and seconded.

7 CHAIRMAN GARD: Roll call.

8 Mr. Etzler?

9 MR. ETZLER: Yes.

10 CHAIRMAN GARD: Dr. Niemiec?

11 DR. NIEMIEC: Yes.

12 CHAIRMAN GARD: Ms. Valiquett?

13 MS. VALIQUETT: Yes.

14 CHAIRMAN GARD: Mr. Davidson?

15 MR. DAVIDSON: Yes.

16 CHAIRMAN GARD: Mr. Schuler?

17 MR. SCHULER: Yes.

18 CHAIRMAN GARD: Ms. Collier?

19 MS. COLLIER: Yes.

20 CHAIRMAN GARD: Mr. Green?

21 MR. GREEN: Yes.

22 CHAIRMAN GARD: Mr. Bortner?

23 MR. BORTNER: Yes.

1 CHAIRMAN GARD: Dr. Alexandrovich?

2 DR. ALEXANDROVICH: Yes.

3 CHAIRMAN GARD: Mr. Seger?

4 MR. SEGER: Yes.

5 CHAIRMAN GARD: Mr. Rulon?

6 MR. RULON: Yes.

7 CHAIRMAN GARD: Mr. Gilson?

8 MR. GILSON: Yes.

9 CHAIRMAN GARD: And the Chair votes
10 aye. The rule is preliminarily adopted 12 to 0.

11 This is a public hearing before the
12 Environmental Rules Board of the State of Indiana
13 concerning preliminary adoption of amendments to
14 rules at 329 IAC 3-1-14 and 329 IAC 3-1-15,
15 Hazardous Waste Financial Assurance Revisions.
16 The draft rule sent to Board Members on
17 November 13th as an amendment to the Board packet
18 is entered into the record of the hearing.

19 Dan Watts will present the rule to the
20 Board.

21 MR. WATTS: Thank you, Chairwoman
22 Gard. Good afternoon, members of the Board. I'm
23 Dan Watts, and I'm presenting LSA Document 14-287

1 for preliminary adoption. This rulemaking makes
2 vital updates and corrections to address
3 longstanding issues in the Hazardous Waste
4 Financial Assurance Rules.

5 The main amendments in the rulemaking
6 include adding specific financial assurance
7 requirements for hazardous waste facilities
8 subject to corrective action, making corrections
9 to the wording of the financial assurance forms,
10 and updating rule language to comport with
11 current rules drafting standards.

12 IDEM also has made changes since the
13 second notice of comment period that includes
14 allowing the surety bond guaranteeing payment for
15 corrective action financial assurance and
16 clarifying some of the requirements for the
17 standby trust fund used in conjunction with this
18 type of surety bond.

19 As Chairwoman Gard mentioned, the Board
20 packet has been updated since it was sent to
21 Board Members. The draft rule was updated to
22 correct typographical errors that do not affect
23 or modify the rule language. The most recent

1 notice of public hearing has been added to the
2 History section, and an errant phrase mistakenly
3 added between 329 IAC 3.1-14-9 subsection (b)
4 and (c), that errant phrase has been deleted.

5 And I wanted to take a moment to speak
6 about the lengthy time line since the first
7 notice of rulemaking. You notice this was first
8 promulgated back in 2014. The preliminary
9 adoption was delayed due to internal discussions,
10 the drafting of revisions, and Departmental
11 changes in rulemaking priorities.

12 As a result, IDEM shifted the focus of the
13 rulemaking from broader comprehensive changes to
14 narrower, more specific changes that address the
15 most significant issues in the Hazardous Waste
16 Financial Assurance Rules. The amendments are
17 limited to the previously mentioned issues, while
18 the majority of the included rule language in the
19 draft rule remains unchanged.

20 Representatives from IDEM are available to
21 answer questions you may have for this
22 rulemaking. The Department requests that the
23 Board adopt this rule so IDEM can move forward

1 with these important updates to the Hazardous
2 Waste Financial Assurance Rules.

3 Thank you.

4 CHAIRMAN GARD: Thank you.

5 Would anyone like to speak to the rule,
6 the proposed rule?

7 (No response.)

8 CHAIRMAN GARD: If not, this hearing
9 is concluded. The Board will now consider
10 preliminary adoption of amendments to
11 329 IAC 3.1-14 and 329 IAC 3.1-15, Hazardous
12 Waste Financial Assurance Revisions.

13 Is there any Board discussion?

14 DR. ALEXANDROVICH: This is Joanne
15 Alexandrovich. I do have something to ask IDEM
16 about.

17 CHAIRMAN GARD: Uh-huh.

18 DR. ALEXANDROVICH: On page 39 of 68
19 of the rule, it's changed -- the language is
20 changed from "insurers" to "insureds"; okay?
21 There's a difference between an insurer and an
22 insured. It's a little hard to say that. So,
23 "insurers" appears in several other places, and

1 then "insurer" appears in a lot of places. So,
2 I'm wondering if IDEM should go through that and
3 make sure they have the correct language
4 distinguishing between "insured" and "insurer."

5 CHAIRMAN GARD: Is --

6 MR. WATTS: This is Dan Watts. I'm
7 going to have to take a closer look at that exact
8 issue you discussed. We -- there was one section
9 where we did change to "insured," and I'm
10 wondering if that is the section -- yeah, I
11 believe -- I believe that was intentional. That
12 change was intentional.

13 DR. ALEXANDROVICH: I'm sure it was
14 intentional, and I kind of went through all of
15 the other appearances of those two terms, and
16 it's maybe not always clear if you're talking
17 about the company that's supplying insurance and
18 the source that's being insured, so I just think
19 it might be wise at this point, while you're
20 changing the rule, to double-check those to make
21 sure it's all what it should be.

22 MR. WATTS: Okay. We can definitely
23 check that before final adoption. The -- yeah,

1 the instance you spoke of, we definitely wanted
2 that to refer to the insured, but there are other
3 instances that we may need to correct, and we'll
4 double-check the usage of "insurer" before final
5 adoption.

6 DR. ALEXANDROVICH: Thank you.

7 CHAIRMAN GARD: Okay. Thank you.

8 Any other Board discussion?

9 (No response.)

10 CHAIRMAN GARD: Then I need a motion
11 to preliminarily adopt the rules.

12 MS. COLLIER: So moved, Angelique
13 Collier.

14 CHAIRMAN GARD: Is there a second?

15 MR. RULON: Second, Ken Rulon.

16 CHAIRMAN GARD: I'll call the roll.

17 Mr. Etzler?

18 MR. ETZLER: Yes.

19 CHAIRMAN GARD: Dr. Niemiec?

20 DR. NIEMIEC: Yes.

21 CHAIRMAN GARD: Ms. Valiquett?

22 MS. VALIQUETT: Yes.

23 CHAIRMAN GARD: Mr. Davidson?

1 MR. DAVIDSON: Yes.

2 CHAIRMAN GARD: Mr. Schuler?

3 MR. SCHULER: Yes.

4 CHAIRMAN GARD: Ms. Collier?

5 MS. COLLIER: Yes.

6 CHAIRMAN GARD: Mr. Green?

7 MR. GREEN: Yes.

8 CHAIRMAN GARD: Mr. Bortner?

9 MR. BORTNER: Yes.

10 CHAIRMAN GARD: Dr. Alexandrovich?

11 DR. ALEXANDROVICH: Yes.

12 CHAIRMAN GARD: Mr. Seger?

13 MR. SEGER: Yes.

14 CHAIRMAN GARD: Mr. Rulon?

15 MR. RULON: Yes.

16 CHAIRMAN GARD: Mr. Gilson?

17 MR. GILSON: Yes.

18 CHAIRMAN GARD: The Chair votes aye.

19 The rule is preliminarily adopted 14 to 0.

20 This is a public hearing before the
21 Environmental Rules Board of the State of Indiana
22 concerning preliminary adoption of amendments to
23 rules at 326 IAC 10-2, NOx Emissions Monitoring

1 Revisions. The draft rule found in today's Board
2 packet is entered into the record of the hearing.

3 Keelyn Walsh will present the rule to the
4 Board.

5 MS. WALSH: Good afternoon once
6 again. I'm Keelyn Walsh, and I'm presenting Rule
7 No. 19-589, Nitrogen Oxides Emission Monitoring,
8 for your consideration.

9 Under the Clean Air Act, U.S. EPA
10 establishes and periodically revises the National
11 Ambient Air Quality Standards, or NAAQS, for
12 certain pollutants and gives states the primary
13 responsibility of attaining the NAAQS through the
14 adoption of emission control measures identified
15 in their State Implementation Plans.

16 In 1998, U.S. EPA issued the Nitrogen
17 Oxides, or NOx, SIP Call, which identifies a good
18 neighbor provision that prohibits states from
19 emitting pollutants that contribute significantly
20 to nonattainment or interfere with maintenance of
21 the NAAQS in a neighboring state.

22 This rule also required SIP revisions from
23 states to address these obligations but did not

1 mandate any specific approach for how to achieve
2 the required emission reductions. While this
3 provided general compliance flexibility for
4 states, the rule contained two additional
5 provisions that were mandatory for large electric
6 generating units, or EGU's, and large non-EGU
7 boilers and turbines, also referred to as large
8 affected units.

9 The first provision of the NOx SIP Call
10 was that any control measures imposed on these
11 types of sources were required to include
12 enforceable limits on the sources' seasonal NOx
13 mass emissions, which could include either limits
14 on individual sources or collective limits on the
15 group of all sources in a state. The second
16 provision required these sources to monitor and
17 report their seasonal NOx mass emissions according
18 to the requirements in the Code of Federal
19 Regulations at 40 CFR 75.

20 Indiana adopted U.S. EPA's NOx Budget
21 Trading Program at 326 IAC 10-4 to implement the
22 requirements of the NOx SIP Call. The trading
23 program was discontinued in 2008, but the control

1 measures remained in effect. IDEM adopted rules
2 at 326 IAC 10-2 in 2018 to enforce the remaining
3 NOx SIP Call requirements that applied to large
4 affected units no longer regulated under a
5 trading program. Large EGU's were addressed in a
6 separate rulemaking and are regulated by the
7 Cross-State Air Pollution Control Rules at
8 326 IAC 24-5, 24-6 and 24-7.

9 On March 8th, 2019, U.S. EPA published a
10 final rule in the Federal Register that removes
11 the requirement for large fossil fuel boilers
12 that are still regulated by the NOx SIP Call to
13 monitor NOx emissions using the continuous
14 emission monitoring requirements in 40 CFR 75.
15 This rulemaking will revise the requirements for
16 large affected units to monitor emissions as
17 specified in 40 CFR 75, and instead allow these
18 sources to report emissions to IDEM at the end of
19 the ozone season based on emission factors or
20 continuous emission monitoring system data.

21 Additionally, several updates have been
22 made to the draft rule language to address the
23 comments received after publication of the notice

1 in the Indiana Register. Increased flexibility
2 will be provided to sources that wish to utilize
3 their current data systems to monitor emissions
4 under 40 CFR 75.

5 These sources will not be required to
6 submit electronic reporting to U.S. EPA under
7 40 CFR 75 Subpart G, which will allow the sources
8 to avoid additional costs and duplicative
9 reporting. Instead, sources will be subject to
10 the ozone season reporting requirements of NOx
11 emissions at 326 IAC 10-2-8.5(e).

12 Other updates include allowing any
13 combination of monitoring strategies for fuel
14 flow meters allowing a 45-day timeframe for
15 submitting stack testing reports, updating rule
16 terminology and clarifying rule language for
17 consistency and reader comprehension, and
18 correcting a typographical error to existing rule
19 language. Once the revisions in this rulemaking
20 are completed, IDEM will submit the final rule to
21 U.S. EPA as a SIP revision.

22 IDEM requests that the Board preliminarily
23 adopt this rule as presented, and program staff

1 are available to answer any further questions you
2 may have.

3 Thank you.

4 CHAIRMAN GARD: Are there any people
5 out there that would like to speak to this
6 proposed rule?

7 (No response.)

8 CHAIRMAN GARD: If not, the hearing
9 is concluded. The Board will now consider
10 preliminary adoption of amendments to
11 326 IAC 10-2, NOx Emissions Monitoring Revisions.

12 Is there any Board discussion?

13 DR. ALEXANDROVICH: Oh, I have
14 another question, general question.

15 CHAIRMAN GARD: That's fine.

16 DR. ALEXANDROVICH: Now that the
17 large affected sources are not required to submit
18 electronic emissions reports to EPA, will their
19 emissions annual and/or ozone season still be in
20 the Clean Air Markets Division database?

21 MS. WALSH: I am not a hundred
22 percent sure on that. I believe so. I don't
23 know if any program staff is available to speak

1 on that specifically, but --

2 MS. BEM: Keelyn?

3 MS. WALSH: Yeah.

4 MS. BEM: I can address that. This
5 is Susan Bem, program staff.

6 The units that -- there's still a budget
7 in the rule, and so the sources will have to show
8 compliance with the ozone season budget. If the
9 units or the sources choose to use an emission
10 factor method and not Part 75, then they would no
11 longer be reporting to the Clean Air Markets
12 Division.

13 DR. ALEXANDROVICH: So, if they're
14 still using their CEMS, they will be electronic
15 reporting?

16 MS. BEM: They have that choice.

17 DR. ALEXANDROVICH: Okay. Well, the
18 choice to report or not to report?

19 MS. BEM: Right, yeah. It would not
20 be mandatory.

21 DR. ALEXANDROVICH: Okay.

22 CHAIRMAN GARD: Any more questions?

23 (No response.)

1 CHAIRMAN GARD: If not, I need a
2 motion to preliminarily adopt the rules.

3 MR. DAVIDSON: So moved, Cal
4 Davidson.

5 CHAIRMAN GARD: Is there a second?

6 MR. RULON: Second, Ken Rulon.

7 CHAIRMAN GARD: Roll call.

8 Mr. Etzler?

9 MR. ETZLER: Yes.

10 CHAIRMAN GARD: Dr. Niemiec?

11 DR. NIEMIEC: Yes.

12 CHAIRMAN GARD: Ms. Valiquett?

13 MS. VALIQUETT: Yes.

14 CHAIRMAN GARD: Mr. Davidson?

15 MR. DAVIDSON: Yes.

16 CHAIRMAN GARD: Mr. Schuler?

17 MR. SCHULER: Yes.

18 CHAIRMAN GARD: Ms. Collier?

19 MS. COLLIER: Yes.

20 CHAIRMAN GARD: Mr. Green?

21 MR. GREEN: Yes.

22 CHAIRMAN GARD: Mr. Bortner?

23 MR. BORTNER: Yes.

1 CHAIRMAN GARD: Dr. Alexandrovich?

2 DR. ALEXANDROVICH: Yes.

3 CHAIRMAN GARD: Mr. Seger?

4 MR. SEGER: Yes.

5 CHAIRMAN GARD: Mr. Rulon?

6 MR. RULON: Yes.

7 CHAIRMAN GARD: Mr. Gilson?

8 MR. GILSON: Yes.

9 CHAIRMAN GARD: And the Chair votes
10 aye. The preliminary -- the rule is
11 preliminarily adopted 12 to 0.

12 This is a public hearing before the
13 Environmental Rules Board of the State of Indiana
14 concerning preliminary adoption of amendments to
15 rules at 326 IAC 2-1-6 and 327 IAC 2-1.5-8,
16 Metals Criteria Rule. The draft rule found in
17 today's Board packet is entered into the record
18 of the hearing.

19 MaryAnn Stevens will present the rule to
20 the Board.

21 MaryAnn?

22 (No response.)

23 CHAIRMAN GARD: MaryAnn?

1 MS. STEVENS: Thank you. Can you
2 hear me now?

3 CHAIRMAN GARD: I can't see you.

4 MS. STEVENS: That's true. I don't
5 have a camera. No loss.

6 CHAIRMAN GARD: Okay. Okay. Yes, we
7 can hear you.

8 MS. STEVENS: Just so you can hear
9 me. All right. Very good. Good afternoon,
10 members of the Board. I am MaryAnn Stevens, a
11 rule writer in the Office of Legal Counsel, Rules
12 Development Branch, presenting LSA Document
13 No. 14-58 regarding Aquatic Life and Human Health
14 Ambient Water Quality Criteria for Metals.

15 This rulemaking proposes revisions to
16 Indiana's Aquatic Life and Human Health Ambient
17 Water Quality Criteria for specific metals to
18 reflect updates based on the most recent science
19 and national recommended water quality criteria
20 developed by the United States Environmental
21 Protection Agency pursuant to Section 304(a) of
22 the Clean Water Act.

23 Section 304(a) requires U.S. EPA to

1 develop criteria for ambient water quality that
2 reflect the best -- the latest scientific
3 knowledge on the impacts of pollutants on human
4 health and aquatic life. Under the Clean Water
5 Act, states are responsible for periodically
6 reviewing and revising their water quality
7 standards, which include water quality criteria.

8 Water quality criteria are amounts of
9 constituents that, when met in ambient waters,
10 protect human health and aquatic life. Water
11 quality criteria apply to Indiana water bodies
12 themselves and do not impose any requirements or
13 costs or any specific entity. A state's water
14 quality criteria are subject to U.S. EPA approval
15 and, if a state deviates from U.S. EPA's
16 recommended water quality criteria, the state
17 must explain why.

18 Based on the latest scientific knowledge
19 and IDEM's careful review and consideration,
20 proposed aquatic life and human health ambient
21 water quality criteria under this rulemaking may
22 become more or less stringent than existing
23 criteria.

1 In the case of some metals, the acute and
2 chronic criteria may both become more stringent.
3 Some become less stringent, and for other metals,
4 the acute and chronic criteria are proposed to
5 change in different directions of stringency,
6 with one becoming more and other less stringent.
7 The point is that the change to a criterion is
8 based on the latest scientific research reflected
9 in the national recommended water quality
10 criteria.

11 The most comments received in response to
12 the Second Notice of Comment Period concerned
13 selenium. The Office of Water Quality held
14 numerous meetings with regulated stakeholders and
15 U.S. EPA regarding selenium.

16 As a result of these discussions, the
17 selenium criterion was adjusted in the waters
18 outside of the Great Lakes System, most notably
19 with the addition of a site-specific criterion
20 for waters where neither sturgeon nor paddlefish
21 occurs. The site-specific criterion was
22 developed because the taxonomic order containing
23 sturgeon was the species tested for the national

1 recommended water quality criteria that was most
2 sensitive to the impacts of selenium.

3 I want to mention that since the draft
4 rule document proposed for consideration of
5 preliminary adoption was posted on IDEM's Office
6 of Water Quality Web site for public -- for the
7 public to review, I found a typographical error
8 and have corrected it in the draft rule document
9 that was provided to Board members in the Board
10 packets, and that is in the Board packet posted
11 on the IDEM Rules Web site.

12 The error was an extra closed parenthesis
13 that has now been removed from the silver formula
14 in Table 6-1 under the Acute Aquatic Criteria
15 Maximum column on page 8 of 46. The errant
16 closed parenthesis occurred at the end of the
17 numerator part of the calculation before the
18 denominator, which is represented by slash two.
19 The corrected draft rule without the errant
20 closed parenthesis in the Table 6-1, Silver Acute
21 Aquatic Criteria Formula, is the document that
22 IDEM is asking the Board to adopt.

23 IDEM asks for the Board to vote for

1 preliminary adoption.

2 Normally, at this point in my
3 presentations, I tell the Board that I and
4 technical program staff members from the Office
5 of Water Quality are available for questions, and
6 we are, but first, I want to introduce Martha
7 Clark Mettler, Assistant Commissioner for the
8 Office of Water Quality, who wants to address the
9 Board. The Board can decide to ask questions now
10 or after Martha speaks, or at both times,
11 whatever is your pleasure.

12 Additionally, I want to tell the Board
13 that I received a comment letter yesterday from
14 Honda Manufacturing of Indiana. That comment
15 letter was forwarded to Board members yesterday
16 by Karla Kindrick, the Rules Branch
17 Administrative Assistant. Jeff Loeffler, who
18 submitted the Honda letter, wrote in his e-mail
19 that Honda did not intend to participate in
20 today's hearing.

21 Late Tuesday evening, another comment
22 letter was sent to IDEM by the Indiana
23 Manufacturers Association, and that letter was

1 forwarded to Board members this morning. Malika
2 Butler, who submitted the Indiana Manufacturers
3 letter, indicated that her attendance in this
4 hearing might be intermittent, and I don't think
5 I've seen her name on the list of participants.

6 I also heard earlier this week from two
7 individuals who said that they are planning to
8 participate in today's hearing and want to
9 provide verbal comments to the Board. Those two
10 are Bruce Stevens, representing Indiana Coal, and
11 Nysa Hogue, representing AES, which is the
12 company that owns Indianapolis Power and Light.

13 Thank you. And I turn these proceedings
14 back to Chair Gard, who can call for questions or
15 allow Martha Clark Mettler her opportunity to
16 speak.

17 MS. METTLER: I'm afraid you're
18 muted, Chair Gard.

19 CHAIRMAN GARD: I'm sorry. I did
20 that when the lawn mower went by. Are there any
21 questions for Martha?

22 (No response.)

23 MS. METTLER: If I may, I just wanted

1 to take this opportunity to elaborate a little
2 bit on this rulemaking, and particularly add some
3 more information regarding selenium, if that
4 would be okay.

5 CHAIRMAN GARD: Yeah, that's fine.

6 MS. METTLER: All right. So, first,
7 I wanted to note that we've tried to be really
8 open in our communications on this rulemaking,
9 and we've developed a tool that we've been using
10 throughout the different steps that showed a
11 comparison of what the national water quality
12 criteria were or what our current criteria are
13 and what was being proposed and the different
14 steps so that it's simpler to kind of see what
15 was happening with the proposed changes. And
16 between the time that we first noticed and while
17 we were developing our draft second notice
18 language is when EPA finalized their
19 recommendation for selenium criterion.

20 Selenium criterion are particularly
21 complicated criterion, and so we had intended to
22 kind of hold off on trying to sort that out and
23 do that in a subsequent rulemaking, but the

1 stakeholders have requested that we go ahead and
2 incorporate that into this rulemaking.

3 Selenium is based on not the water column
4 numbers, but it goes back to protection of fish
5 eggs, and then it's extrapolated into another
6 number for fish tissue, which is then
7 extrapolated into a protective number in the
8 water quality. So, it's not what we're normally
9 used to when we're just used to looking at a
10 water quality number.

11 I wanted you to be aware that, as MaryAnn
12 mentioned, we met a number of times, I think on
13 average, probably bimonthly, with stakeholders,
14 trying to figure out how to best incorporate this
15 language and contemplate the implementation of
16 the criteria. We worked with EPA. We researched
17 what other states had done. The states that had
18 adopted selenium criteria did it before the
19 national recommended criteria, so they had a
20 little more flexibility. I appreciate how much
21 EPA worked with us. They actually flew people in
22 from D.C. and drove down from Chicago to really
23 try to think through some of the issues here.

1 And I honestly believe that what we are
2 presenting here for preliminary adoption is the
3 best balanced criteria we can come up with that
4 gives some flexibility to stakeholders. We
5 established that sturgeon absence number. We
6 have site-specific criteria procedures that are
7 available, and we're looking into how we can
8 apply an intermittent criteria, which I think
9 would be really helpful in a lot of situations.

10 The last thing I wanted to note is: When
11 you think about sturgeon, you may not be aware --
12 I'm sure Dan Bortner is, but many of the
13 others -- it's something I learned in this
14 rulemaking -- is that we have a rather robust
15 caviar industry in Indiana, so protecting the
16 sturgeon eggs is important.

17 So, that's the last thing I wanted to say,
18 and I'm open to any questions as well, and staff
19 are available, too.

20 CHAIRMAN GARD: Any questions for
21 Martha or for MaryAnn?

22 Joanne?

23 DR. ALEXANDROVICH: Yes. Thank you.

1 A couple of questions. You said you developed a
2 tool to look at the changes. Is that tool
3 available on the Web site?

4 MS. METTLER: Yeah, the comparison
5 charts for the different steps has been posted on
6 the Web site all along.

7 DR. ALEXANDROVICH: Okay. And the
8 second and the third questions are probably
9 related. When you say you met with stakeholders,
10 when I was going through all of the rule
11 information, I kind of got the idea that it was
12 all sorts of stakeholders, and then I got the
13 idea that it was just fellow agencies, like DNR
14 and EPA and so on. So, I'm wondering: Were
15 there industrial representatives on the
16 stakeholders meetings?

17 And related to that, in the comments,
18 they're all looking for guidance on
19 implementation, so can you give us a status
20 update on where that guidance is?

21 MS. METTLER: Yeah. Most -- the
22 majority of the meetings with stakeholders were
23 with industrial stakeholders. We were trying to

1 make sure that we were keeping check with what
2 EPA would approve as we worked through those, and
3 then we just wanted to make sure we understood
4 what some of the ideas that were presented by the
5 stakeholders that reflected information they knew
6 from other states, that we were up to speed on
7 those.

8 So, we have a draft implementation
9 guidance for how to collect fish, if the -- so,
10 you have the option of using the published water
11 quality number, but if that proves too stringent
12 and you think that the fish number would be more
13 reflective of what's happening at your site, we
14 have guidance on how to collect that so that you
15 can apply that fish tissue number as opposed to
16 the water quality -- water column number.

17 And we've started some other guidances.
18 It's one of those chicken-egg situations, where
19 it's really hard to nail down and finalize the
20 guidance until we have the water quality
21 criterion set.

22 DR. ALEXANDROVICH: Are all of
23 those -- do you have guidance on the Web site

1 somewhere?

2 MS. METTLER: I don't know that they
3 are on the Web site. They have been circulated
4 to interested stakeholders.

5 COMM. PIGOTT: Martha, when you say
6 "interested stakeholders," you mean the coal
7 folks, the business folks, industry, primarily,
8 that has expressed the biggest concern about
9 this?

10 MS. METTLER: Correct, as we were
11 trying to develop that with their feedback.

12 COMM. PIGOTT: And when you talk
13 about bimonthly meetings, Martha, it's my
14 understanding that these meetings have occurred
15 over a series of years. This isn't just over the
16 last few months, but probably before the
17 beginning of the Holcomb Administration; am I
18 correct when I say that?

19 MS. METTLER: Well, it's been since
20 the second notice, primarily, which was in 2016.

21 DR. ALEXANDROVICH: Just one last
22 comment. I kind of thought that all Indiana
23 citizens and residents are stakeholders, so maybe

1 if you can get some of that guidance up on the
2 Web. Certainly Board members are.

3 MS. METTLER: Yes, we can do that.

4 COMM. PIGOTT: Martha, we've gone
5 through other rulemakings where, while we are
6 going through the rulemaking, we develop
7 guidance, and even after rules are drafted. I
8 can remember a combined sewer overflow rule where
9 we provided guidance, and after the rule was
10 developed. At this point, we're really just at
11 preliminary adoption of the rule; isn't that
12 correct? And therefore --

13 MS. METTLER: Yes.

14 COMM. PIGOTT: -- it's not the end of
15 the rulemaking process. Quite literally, there's
16 opportunity for change in the rule, but also the
17 development of guidance along the way.

18 MS. METTLER: Correct.

19 MR. GILSON: Martha, this is Paul
20 Gilson. Thanks for your comments.

21 I do think Bruno's hitting on the concern
22 of the regulated industry here around, you know,
23 the development of the guidance and where it

1 stands today in the rulemaking. I am trying to
2 come up to speed on this issue of selenium, and I
3 don't know very much, so I do have a couple of
4 questions.

5 The -- can you explain to me the process
6 you would need to go through for -- in a
7 nonsturgeon water -- to establish criteria, a
8 site-specific criteria?

9 MS. METTLER: Well, we've established
10 criteria that would apply if you can demonstrate
11 you are in a non -- discharging to a nonsturgeon
12 water, so it wouldn't exactly be site-specific
13 criteria, but you would need to go to a process
14 to demonstrate that where you're discharging is
15 not a place where those types of fish would
16 reside. So, you would do a literature search and
17 evaluate whether there has been sturgeon there in
18 the past and what other available information
19 there is about the fish populations in that area.

20 MR. GILSON: And would it require
21 approval by IDEM or EPA for that site-specific
22 criteria?

23 MS. METTLER: To apply the sturgeon

1 absent criterion, yes, as well as if you took
2 another approach, which was to develop
3 site-specific criteria based on -- whether you
4 have sturgeon or not, based on the background
5 criteria and what's actually happening at your
6 site. Both of those would require an EPA
7 approval.

8 MR. GILSON: And what would that
9 process look like, Martha, from a timing
10 perspective? What kind of information would you
11 need to give to EPA? I think there's concern
12 there just around what that process would look
13 like, how burdensome it would be, and how long it
14 might take.

15 MS. METTLER: I don't know that I
16 could completely speak for EPA. They tend to try
17 to turn things around typically in about 60 days,
18 would be my guess, to do the -- check the
19 literature type of search and make sure that
20 there was -- that it was accurate.

21 In terms of an actual site-specific water
22 quality change, some of them might require a rule
23 revision, and some may not, so if it does take

1 that, it would be a little while, but we've tried
2 to set up a process so that if you -- if you
3 follow it, that it would be reviewed without a
4 rulemaking.

5 MR. GILSON: Okay. And do we know
6 which waters have sturgeon and which are
7 nonsturgeon waters? Have we identified those?

8 MS. METTLER: Only on the broadest
9 level, which we don't think would be useful for
10 actual discharge decisions. Typically to
11 ensure -- if we were to like map it out and say,
12 "These are the waters where they're in or at,"
13 you would add a buffer-type area, which would
14 exclude a lot of waters that may really not have
15 the sturgeon. So, we didn't want to go that
16 route.

17 MR. GILSON: Okay. Thank you.

18 CHAIRMAN GARD: Any other questions?

19 MS. COLLIER: Yeah. This is
20 Angelique Collier. I have a question probably
21 for Martha or Bruno. So, I think if I heard
22 correctly at the beginning of the meeting, the
23 anticipated schedule for final adoption would be

1 in a February Board meeting, so I was just
2 curious about the timing expectations of any
3 additional guidance documents that would be
4 developed, if it would be intended that
5 additional guidance would be available before the
6 final adoption, or if that would trail, and how
7 the compliance deadlines would fall in relation
8 to any additional guidance that would become
9 available.

10 MS. METTLER: I think we are close to
11 finalizing some of the guidance that could be
12 closely timed with the request for final
13 adoption.

14 In terms of compliance, there is a lot of
15 steps that go -- that would be well after the
16 rule is final, with -- that there's a lot of
17 options in terms of figuring out if you even have
18 to worry about selenium and if you have some
19 reasonable potential to exceed the selenium, then
20 you would have some ability to use these other
21 flexibilities that we've built into the rule, and
22 even after all of that is said and done, you
23 would have opportunity for a compliance schedule.

1 So, in terms of having to actually meet this --
2 these numbers, we're looking at a year or more
3 away, or even multiple years away.

4 COMM. PIGOTT: Yeah. Martha, it's
5 Bruno. Just to expand on that, you know, people
6 who currently hold a permit, and if it's
7 effective when the Rule Board makes its decision
8 about this, if the Board votes, it's not
9 automatically imposed on people. So, just to be
10 clear, it's just setting the standard, and then
11 there's a whole process. First a permit has to
12 come up for renewal, and then there's a process
13 that the permit has to be written.

14 And so, it can be -- as Martha said, there
15 are compliance schedules that stretch, depending
16 on where the facility's located. If it's
17 downstate, you have three years to comply with a
18 new permit requirement. If it's upstate, in
19 certain areas, you can have five. And there are
20 variances. There's -- so, it's a variety of
21 tools that are available to the agency that means
22 that permittees won't automatically -- when the
23 Board passes a rule and it becomes effective,

1 that they aren't automatically impacted.

2 In fact, then there's a whole process by
3 which our rule writers make a determination about
4 whether or not these criteria would be converted
5 into permit limits for those facilities. And
6 that process might -- doesn't take place until a
7 permit comes up for renewal or a new permit is
8 requested.

9 And as we mentioned, then there can be up
10 to three years to comply with the terms of those
11 things. So, we could be talking about several
12 years before this would be effective for any
13 individual permittee, and that would give us
14 plenty of time to ensure even if the guidance
15 documents weren't completed, that they would be
16 completed by the time that it was implemented in
17 permits.

18 MS. COLLIER: Thank you. That was a
19 very helpful explanation. I appreciate it.

20 CHAIRMAN GARD: Any other questions?

21 MS. METTLER: I just might reiterate
22 that there are other stakeholders that are
23 looking at other criteria that are anxious for

1 this rule to move forward.

2 COMM. PIGOTT: Yeah, and the Honda
3 Motor Company did submit a letter that was
4 supportive of moving forward with the rulemaking,
5 and precisely because there are a number of
6 standards that are being revised as part of this
7 rulemaking, and so, companies will stand to
8 benefit from this rulemaking, as well as some
9 being worried about the selenium numbers and how
10 do you implement this. It's a combination of
11 different standards that are being implemented
12 here, or passed.

13 CHAIRMAN GARD: Okay.

14 MR. CLEM: Chair Gard, there were a
15 couple of members of the public who wanted to
16 make comments. Are you ready for those?

17 CHAIRMAN GARD: Okay. Yes, I am.

18 MR. CLEM: Okay.

19 CHAIRMAN GARD: And I think
20 Dr. Alexandrovich has her hand up again.

21 DR. ALEXANDROVICH: Yeah, I do.
22 Thanks. Just one more thing, and this will be
23 quick, trust me.

1 CHAIRMAN GARD: That's all right.

2 DR. ALEXANDROVICH: In the rule info
3 sheet on page two, the third paragraph down, it
4 discusses the human health criteria for arsenic,
5 manganese, mercury and thallium are not proposed
6 to change. I think you mean barium and not
7 manganese. There is no criteria for manganese
8 that I saw on the lists.

9 MS. METTLER: I admit to be stumped.
10 I would have to check that.

11 CHAIRMAN GARD: Okay. You can check
12 that.

13 Okay. Ryan, for those that are in the
14 chat room or whatever --

15 MR. CLEM: Nysa Hogue.

16 MS. HOGUE: Yes. Good afternoon. My
17 name is Nysa Hogue. I am a Senior Environmental
18 specialist with AES, and I am presenting both
19 verbal and written comments on behalf of the
20 Indianapolis Power and Light Company today.

21 IPL appreciates the opportunity to offer
22 comments on the proposed revisions to the aquatic
23 life and human health ambient water quality

1 criteria for metals, LSA No. 14-58. First and
2 foremost, I want to commend IDEM for their
3 efforts related to this rulemaking. IDEM has
4 invested hours, many, many hours, of hard work
5 and dedication developing this rule, and IPL
6 appreciates and supports these efforts.

7 We also support IDEM's ongoing efforts to
8 develop selenium implementation guidance, which
9 IPL believes is a critical component in allowing
10 facilities to demonstrate compliance with the
11 proposed selenium water quality criteria. My
12 comments provided here today are specific to such
13 proposed water quality criteria.

14 IDEM has proposed a revision to include a
15 general process related to obtaining a
16 site-specific water quality criterion at
17 327 IAC 2-6 -- 2-1-6(a)(4)(C). IPL believes that
18 including such a provision is appropriate.
19 However, IPL does not believe that including
20 specific methods in the rule to obtain such
21 site-specific criteria is appropriate.

22 Instead, those methods should be included
23 in a guidance section -- a guidance document,

1 which I want to note that currently the draft
2 IDEM selenium guidance document does contain such
3 methods. I want to point that out. And that
4 allows applicants to have the ability to suggest
5 other methods as well if they can show that those
6 methods are appropriate.

7 The methods provided in the proposed rule
8 are listed in a draft EPA document from 2016.
9 Applicants should not be limited to using only
10 those methods. EPA may modify its draft 2016
11 guidance to allow other methods. IDEM may allow
12 other methods in its own guidance that is being
13 developed now. And as science develops,
14 applicants may be able to show that other methods
15 are scientifically defensible, allowing
16 alternative ways to derive a site-specific
17 criterion.

18 Specifying only the two methods currently
19 listed by EPA would prohibit facilities from
20 using other methods without going through a
21 rigorous and lengthy rulemaking process. This
22 could result in a facility utilizing an outdated
23 method that may not provide the facility the

1 ability to utilize its fish tissue sampling
2 results appropriately when developing
3 site-specific criterion.

4 And even on a worst-case scenario, it
5 could result in a facility having to default to
6 the water column criteria for permitting purposes
7 because the EPA-specified methods did not provide
8 the full flexibility to use fish tissue sampling
9 results in a proper scientific manner. This, in
10 turn, can result in the need for unnecessary
11 actions such as costly treatment.

12 Therefore, IPL requests that the proposed
13 language at 327 IAC 2-6(a)(4)(C)(i) be revised as
14 follows: Modification of the selenium water
15 column criteria element must be achieved
16 according to the following: Site-specific water
17 column criterion elements must be a method
18 included in relevant guidance issued by U.S. EPA,
19 IDEM, or another method that IDEM determines is
20 scientifically defensible.

21 Furthermore, IDEM's proposed revision to
22 327 IAC 2-6(a)(4)(B) includes selenium water
23 quality criteria for nonsturgeon and paddlefish

1 waters, based on comments submitted from various
2 industries during the Second Notice for Comment.
3 Please refer to Table 6-1(B).

4 While IPL commends IDEM for recognizing
5 the need to include water quality criterion for
6 waters that do not contain sturgeon and
7 paddlefish, the proposed requirement to obtain a
8 site-specific modification as included in
9 327 IAC 2-6(D) (ii) through (iv) is not necessary
10 or appropriate. The water quality criteria for
11 nonsturgeon and paddlefish waters are already
12 included in Table 6-1(B).

13 IPL believes that the only requirement
14 necessary for a facility to be able to utilize
15 such water quality criteria is providing IDEM
16 with the necessary information to demonstrate
17 that sturgeon and paddlefish do not occur at that
18 site, as included in 326 IAC 2-6 (a) (4) (D) (i).
19 If information is provided to IDEM to render a
20 successful demonstration, IDEM can simply provide
21 an approval to the facility such that that
22 respective site can then utilize the water
23 quality criteria included in Table 6-2(B) without

1 the need to obtain a site-specific modification
2 to the criteria.

3 This will allow facilities to be able to
4 move forward with compliance based on criteria
5 that are reflective of their site's water
6 conditions for nonsturgeon and paddlefish in a
7 reasonable manner. They should not be delayed
8 due to more rigorous and unnecessary actions such
9 as additional rulemaking that can place the
10 facility in jeopardy of having to comply with
11 more stringent water quality criteria than
12 necessary.

13 IPL appreciates your consideration of
14 these comments, and again, I can't stress this
15 enough, we look forward to continuing to work
16 with IDEM regarding the draft selenium
17 implementation guidance and appreciate all
18 efforts that IDEM has made related to this
19 rulemaking.

20 Thank you.

21 CHAIRMAN GARD: Thank you.

22 Who's next?

23 MR. CLEM: Bruce Stevens.

1 MR. STEVENS: Thank you, Madam Chair,
2 members of the Board. I'm Bruce Stevens, with
3 the Indiana Coal Council, a trade association for
4 the coal industry in the State of Indiana. I
5 appreciate the opportunity to input at today's
6 meeting.

7 First, I will echo what you heard moments
8 ago, and I wish to be very clear how much we
9 appreciate the staff of the Office of Water
10 Quality for the amount of time they have taken to
11 meet with us, consider our concerns with parts of
12 this rulemaking. As Ms. Mettler said, portions
13 of this rulemaking are quite complicated, and we
14 appreciate their efforts in working with us.

15 I don't plan to get overly detailed with
16 my remarks at this moment, but instead, we have
17 crafted some substantive written comments, and I
18 will be submitting them for consideration as part
19 of the record very shortly. For the most part,
20 those comments pertain to the proposed selenium
21 standard. We submitted an extensive comment on
22 the Second Notice of the standard, including a
23 technical report we commissioned with GEI

1 Consultants.

2 While we continue to believe that many of
3 the scientific issues with the federal criteria
4 derivation process that were identified by this
5 technical report still hold true, we do believe
6 IDEM has attempted to address some of the primary
7 concerns with the revised proposal.

8 We appreciate that IDEM has proposed a
9 two-part standard, one for sturgeon waters and
10 one for nonsturgeon waters. The vast majority of
11 our operations are quite the distance from any
12 waters we believe have any potential for this
13 type of fish. Our concerns revolve around how
14 the designation will actually be made to
15 determine what are sturgeon or nonsturgeon
16 waters, and how a fish-tissue-based standard is
17 to be implemented.

18 We recognize IDEM's been working on
19 implementation procedures, and that is
20 appreciated, but those are not complete at this
21 time. We look forward to working with IDEM on
22 implementation protocols, but prefer
23 implementation would have been determined prior

1 to placing the standard in the rule.

2 Due to the complexity of this standard,
3 there are several outstanding concerns regarding
4 standard application, permitting, and compliance
5 that need to be addressed. Our position is that
6 if the manner in which implementation is to occur
7 has not been determined prior to final adoption,
8 we believe selenium should not be part of the
9 rulemaking and should, again, instead be pulled
10 until such time the regulated community has an
11 understanding of the certainty of these
12 processes.

13 And again, I thank the Board for allowing
14 me to input on this important matter.

15 CHAIRMAN GARD: Thank you.

16 Anybody else?

17 MR. CLEM: I don't see anyone right
18 now. I would just like to reiterate, for those
19 who called in, they can press the star six to
20 unmute themselves if they would like to make
21 comments, but I don't see anyone else indicating
22 that.

23 CHAIRMAN GARD: Okay. And thank you.

1 If no one else wishes to speak to this
2 rule, the hearing is concluded. The Board will
3 now consider preliminary adoption of the
4 minutes -- of amendments to 327 IAC 2-1-6 and
5 327 IAC 2-1.5-8, Metals Criteria Rules.

6 Is there any Board discussion?

7 MR. ETZLER: Madam Chair, Bill
8 Etzler. I've got a few comments.

9 CHAIRMAN GARD: Yes.

10 MR. ETZLER: First of all, I applaud
11 the agency. I realize how difficult this whole
12 issue is and their working with the stakeholders
13 to come to this point.

14 In hearing some of the comments, one thing
15 that I would really appreciate is once the
16 information from the coal industry and IPL
17 becomes available, I would like to make sure that
18 that information is directed to the Board members
19 so that we have an opportunity to look at it
20 before the next meeting. I think it would be --

21 CHAIRMAN GARD: Yes, absolutely.

22 MR. ETZLER: I think that would be
23 very helpful for us as we move forward in this

1 process.

2 CHAIRMAN GARD: Yeah, it would. I
3 appreciate that.

4 Any other comments?

5 (No response.)

6 CHAIRMAN GARD: If not, then this is
7 the last one of the day. I need a motion to
8 preliminarily adopt the rules. Do I hear a
9 motion?

10 MR. ETZLER: So moved, Madam Chair,
11 Bill Etzler.

12 CHAIRMAN GARD: Is there a second?

13 MR. RULON: Second, Ken Rulon.

14 CHAIRMAN GARD: I'll call the roll.
15 Mr. Etzler?

16 MR. ETZLER: Yes.

17 CHAIRMAN GARD: Dr. Niemiec?

18 (No response.)

19 CHAIRMAN GARD: Ms. Valiquett?

20 (No response.)

21 CHAIRMAN GARD: Mr. Davidson?

22 MR. DAVIDSON: Yes.

23 CHAIRMAN GARD: Mr. Schuler?

1 MR. SCHULER: Yes.

2 CHAIRMAN GARD: Ms. Collier?

3 MS. COLLIER: Yes.

4 CHAIRMAN GARD: Mr. Green?

5 MR. GREEN: Yes.

6 CHAIRMAN GARD: Mr. Bortner?

7 (No response.)

8 CHAIRMAN GARD: Mr. Bortner?

9 (No response.)

10 CHAIRMAN GARD: We may have lost him.

11 Dr. Alexandrovich?

12 DR. ALEXANDROVICH: I just want to
13 make a comment before I submit my vote, if that's
14 okay.

15 CHAIRMAN GARD: Uh-huh, certainly.

16 DR. ALEXANDROVICH: I would like that
17 as we go from preliminary adoption to final
18 adoption, any changes or stakeholder meetings or
19 guidance that's floating out there, that a
20 process is taken between now and maybe February
21 or whenever that will be that the Board -- well,
22 me, I would like to know, and I think the other
23 Board members might like to know, about these

1 meetings and where IDEM stands and what kind of
2 changes they might be considering to make to the
3 rule.

4 So, with that comment, I say yes.

5 CHAIRMAN GARD: Thank you.

6 Mr. Seger?

7 MR. SEGER: Yes.

8 CHAIRMAN GARD: Mr. Rulon?

9 MR. RULON: Yes.

10 CHAIRMAN GARD: Mr. Gilson?

11 MR. GILSON: No.

12 CHAIRMAN GARD: The Chair votes aye.

13 Did Dr. Niemiec respond? Dr. Niemiec?

14 (No response.)

15 CHAIRMAN GARD: I don't think he did.

16 The best that I can tell, the preliminary
17 rules are adopted 10 to 0, and we do have a lot
18 of work to do on this.

19 MR. ETZLER: Madam Chair?

20 CHAIRMAN GARD: Yes.

21 MR. ETZLER: I think the vote was 10
22 to 1.

23 CHAIRMAN GARD: 10 to 1?

1 MR. ETZLER: We had a --

2 CHAIRMAN GARD: Oh, you're exactly
3 right; I'm sorry. I'm sorry.

4 COMM. PIGOTT: Madam Chair, this is
5 Bruno. I just wanted to also say we'd be happy
6 to provide the information that Joanne
7 Alexandrovich asked for and keep her up to date
8 and include her in the meeting times and dates --

9 CHAIRMAN GARD: Okay.

10 COMM. PIGOTT: -- as well as the rest
11 of the Board as well. So, we appreciate those
12 comments and will do so.

13 CHAIRMAN GARD: Okay. And thank you,
14 Commissioner.

15 Okay. Moving on, the Board will now open
16 discussion on the Citizen's Petition hearing held
17 on October 28th. Most of our Board Members were
18 able to attend, and I hope the rest of you were
19 able to view the hearing when it was placed on
20 the IDEM Web site shortly thereafter. Documents
21 from the hearing were also provided to Board
22 Members and were also placed on the Web site.

23 In the past we have generally used this

1 time to ask agency -- ask questions of those who
2 testified, as well as questions of the agency. I
3 know that many of you have additional questions,
4 as do I. Several of the Petitioners are with us
5 today, as well as agency technical staff, to
6 assist our discussions.

7 To those of you speaking for the
8 Petitioners today, please identify yourselves,
9 and that would be by raising their hands, or how
10 do you want them to do that?

11 (No response.)

12 CHAIRMAN GARD: Ryan?

13 MR. CLEM: Yeah, I don't see any
14 hands raised or anything in the chat.

15 CHAIRMAN GARD: Okay.

16 Martha, could you please introduce the
17 IDEM staff in the meeting today available to
18 answer questions?

19 MS. METTLER: Yes. We have Jerry
20 Dittmer, who is the Chief of our Permits Branch,
21 which also oversees the CSO program, and Paul
22 Higginbotham, who is a Deputy Assistant
23 Commissioner, Office of Water Quality, and I'll

1 kind of hand the reins over to Paul now.

2 CHAIRMAN GARD: Okay. Paul?

3 MR. HIGGINBOTHAM: Thank you, Martha.

4 Thank you, Madam Chair and the Board, for
5 allowing us this opportunity to answer your
6 questions and have further discussion about the
7 Petitioners' recommendation for the 2012
8 criteria. In addition, I'd like to thank my
9 other IDEM colleagues who have been working on
10 this for many years, as well as the CSO
11 communities and their consultants, who have put a
12 lot of effort and time into improving water
13 quality through implementation of their long-term
14 control plan.

15 I -- as I mentioned, you -- it sounds like
16 you guys will have questions for us today, Madam
17 Chair, but I also want to kind of help focus some
18 of this discussion maybe today to help us through
19 this. You know, it's my opinion that it's -- the
20 issue is not so much the 2012 criteria itself,
21 it's what some CSO communities believe they will
22 achieve through adoption of the criteria, which
23 is compliance with water quality standards. So,

1 it's not so much the criteria as it is the
2 implementation and compliance with that process,
3 and there are still many unanswered questions
4 associated with that that maybe we'll get into
5 today.

6 So, thank you again, Madam Chair.

7 MR. CLEM: And Chair Gard, this is
8 Ryan. Craig Williams is available to speak on
9 behalf of the Petitioners, if needed.

10 CHAIRMAN GARD: Okay. And can you
11 identify him? Is he with a municipality or a
12 consultant?

13 MR. CLEM: Yeah.

14 Craig, you can unmute yourself. You did
15 not indicate.

16 MR. WILLIAMS: Yeah. Thank you,
17 Madam Chair. Craig Williams, with the City of
18 Angola, representing a lot of the communities
19 that have signed onto this petition.

20 As Paul mentioned -- he's absolutely
21 correct -- we see -- we are looking for a way to
22 get to the regulatory certainty that the 1994 CSO
23 policy articulated that we can anticipate at the

1 end of our projects and our efforts to remove
2 combined sewage from our systems.

3 We see the 2012 recreational water quality
4 criteria as a potential vehicle, but really the
5 purpose of this petition was to try to drive that
6 discussion to find closure here for communities
7 that have spent, I think, an estimated four
8 billion dollars over the last 20 years on CSO
9 controls.

10 CHAIRMAN GARD: Okay.

11 MR. WILLIAMS: I'll turn it back over
12 to you. Thank you.

13 CHAIRMAN GARD: Okay. Thank you very
14 much.

15 Now, first of all, what I want to say is
16 that this is -- to the Board -- this is a very
17 complicated issue. While it might not seem like
18 it on the surface, there are many, many
19 unanswered questions, and I -- I think we'll go
20 through some questions, but I think we're going
21 to want to give time for IDEM to answer many of
22 the questions, and also the Petitioners to answer
23 questions, and they're going to have to get back

1 with us at another meeting. There's no way that,
2 with the complexity of this, that we can go
3 through all of this today.

4 With that, Bill, I know you have
5 questions. Do you want to kind of lead off with
6 some questions?

7 MR. ETZLER: Thank you, Madam Chair.

8 Well, let's start with since we had the
9 hearing, I have done a great deal of research. I
10 don't know how many of you are aware, but my
11 history in the work community involves managing a
12 water and wastewater utility for about 15 years.
13 I am a licensed professional engineer, and I'm
14 also a graduate of IU's Chemistry Department, and
15 so, I see this issue from many different
16 perspectives.

17 It obviously impacts IDEM in how they
18 implement the water quality criteria, how they
19 write and issue NPDES permits, and it also
20 affects them because we need to find ways of
21 implementing testing procedures that will ensure
22 that the water quality criteria are being met.

23 My research has lead me at this point to a

1 list of about 21 or 22 different questions that I
2 think need to be answered, and echoing Chair
3 Gard's comments, I don't think that trying to
4 answer these questions in this setting probably
5 is the appropriate way to get the information.
6 And I have questions for Craig and the group of
7 communities as well as I do for the agency
8 regarding some of these issues.

9 I'm okay with asking some of them today,
10 but I would prefer that if the Board has
11 questions like I have, that we submit them to the
12 agency and ask for a written response to the
13 questions, because, like I said, some of them are
14 very complex. Some of them we would not be able
15 to even answer today.

16 So, with that, I'd like to ask Craig a
17 question first. Craig, the Mayor's testimony
18 indicated that Angola's been complete with their
19 program since 2010, and that you have moved into
20 the post-construction monitoring part of your
21 program. From your information gathering, water
22 quality testing, have you been able to
23 demonstrate that Angola can meet the water

1 quality criteria as have been established now?

2 MR. WILLIAMS: I apologize. I was
3 having problems unmuting there.

4 Our post-construction monitoring and the
5 audit of our CSO long-term control plan included
6 an assessment of the ability to fully capture and
7 treat the ten-year one-hour storm, which for the
8 city, for our geographic area, is 1.67 inches an
9 hour.

10 Monitoring for -- we did not do any direct
11 monitoring for E. Coli in our receiving stream.
12 That was not part of our plan, and so I don't
13 know if I can give you a full answer for that,
14 Bill, but the threshold was fully capturing and
15 treating that ten-year one-hour storm, which we
16 actually far exceed. We last month submitted a
17 report. We had a 2.12-inch-per-hour storm that
18 we fully captured and treated.

19 MR. ETZLER: Well, as I said, that
20 answers part of the question, because obviously
21 the work that you have done has put you in a
22 position of success, which I really applaud
23 Angola for being able to do. I realize from

1 utilities that I managed how difficult a process
2 that is.

3 But it does not go to answering the
4 question of whether you are meeting the water
5 quality criteria in the receiving stream, which
6 is really what becomes an issue when you move to
7 the recreational water quality standard. And
8 that's one thing that concerns me, because I
9 realize how difficult that is.

10 And I'm not going to digress about my
11 history, but just suffice it to say that the
12 utility that I managed was under the gun because
13 citizens thought that we were polluting the
14 stream that we were discharging to, and we did
15 extensive stream testing to prove to the
16 community and to the agency that indeed the
17 quality of the water that we were discharging was
18 significantly better than what was in the
19 receiving stream. That doesn't mean that we were
20 meeting the water quality criteria. It just
21 means that the treatment plant was doing its job,
22 which is primary. So, that's just one question.

23 A question for the agency. And I've had a

1 lot of discussion with a lot of people about this
2 issue, and I understand that there was a work
3 group that was discussing this issue, and that at
4 some point in time in the last few years it was
5 very active, and then it ceased having
6 conversation, if -- from what I understand. And
7 I'd like to hear from the agency what prompted
8 stopping the discussion on this issue to try and
9 do some rulemaking changes that would move this
10 process forward?

11 MR. HIGGINBOTHAM: Yeah. Bill, this
12 is Paul Higginbotham with the Office of Water
13 quality. Yeah, we have -- over the past couple
14 of years have been -- had been working informally
15 with a group of consultants and communities,
16 trying to kind of -- you know, kind of figure out
17 this issue that's being discussed today and how
18 we would go about implementing it in a way that
19 could potentially result in CSO communities
20 showing compliance with water quality standards.

21 And so, we met. It wasn't -- again, it
22 wasn't formal, it was informal. We met
23 periodically, and in my opinion -- and there's

1 others that are on this group and had some
2 discussions as well that may want to jump in, but
3 in my opinion, the impasse we came to is when we
4 had discussions with this outside group, we'd
5 also be bouncing ideas off U.S. EPA as it relates
6 to compliance and interpretation of compliance.

7 And we just, at least at the staff level
8 of EPA at Region V, headquarters wasn't involved,
9 their senior staff at Region V were not involved,
10 but we were unable to get past the "How do you
11 interpret this or apply this criteria to show
12 that they're meeting water quality standards?"
13 Things such as, you know, would modeling be
14 required? And if you do modeling, well, you also
15 have to have in-stream data to put into that
16 model. And then there's only so many of these
17 CSO communities that have the ability really to
18 do such of a modeling activity. A lot of these
19 communities didn't do models and don't have
20 models to do such work.

21 And then there's an interpretation of
22 time. You know, the 2012 criteria talks about
23 samples, ten percent of samples can be basically

1 thrown out, you don't have to look at those.

2 Well, then there's a jump to -- from time -- or
3 from sample set to time.

4 So, there was just discussion concerning
5 how many hours of overflow in a given period of
6 time could be allowed and say you meet water
7 quality standards. And that was the most
8 simplistic way to try to show that you're meeting
9 water quality standards, but we were not able to
10 get past getting EPA to agree to that type of
11 approach.

12 And then if that's the most simplistic
13 approach to show it, which they wouldn't really
14 give us the okay to do that, then you get into
15 this other aspect of modeling, and modeling,
16 again, gets complicated, it gets expensive,
17 requires lots of data.

18 So, that, in my opinion -- again, there's
19 others on the work group that may have differing
20 opinions, but I feel that's where things went
21 awry is we just couldn't get past that
22 implementation compliance approach.

23 MR. ETZLER: Thank you.

1 Another question. I am aware that there
2 are other states that have implemented
3 recreational water quality criteria into their
4 rules. Are we aware of any of them that -- those
5 states that may have come up with implementation
6 methods for the changes that they have made to
7 their rules?

8 MR. HIGGINBOTHAM: On that issue,
9 Bill, I know that -- I know at least in Region V,
10 Ohio and Wisconsin have in fact adopted the 2012
11 criteria into their rulemakings, but we are
12 unaware to this -- as of today, we're unaware of
13 any state that has actually went from adopting
14 that 2012 criteria to actually implementing it
15 for compliance with CSO-related issues. We're
16 not aware of any state that has done that to
17 date.

18 And I'm going to call, I guess, Jerry
19 Dittmer. He should be on this as well.

20 Jerry, could you kind of maybe talk about
21 how some states went from the 20 -- went to the
22 2012 criteria because they're giving way for the
23 people?

1 MR. DITTMER: Yeah, sure. I mean
2 EPA -- and again, I'm Jerry Dittmer. I'm IDEM's
3 Office of Water Quality Permits Branch Chief, so
4 I'm kind of new to the Board.

5 So, just for a second, I kind of am
6 responsible over our -- basically our wastewater
7 NPDES permitting program, which entails
8 industrial wastewater, wastewater pretreatment,
9 facility construction for sewers, wastewater
10 treatment plants, some types of nonstormwater
11 general permits, and also our municipal permits,
12 which, as a subgroup, has our CSO folks. So,
13 kind of dealing with the permitting wastewater
14 facilities and our CSO program is kind of my
15 shop. So, that's a brief introduction.

16 Paul's right. I think when you look at
17 the other states, a lot of states held onto older
18 fecal coliform standards for some time. More
19 recent studies have shown that E. Coli is a
20 better indicator pathogen that directly
21 correlates between gastrointestinal illness and
22 high levels in fecal. So, that's why EPA's kind
23 of moved states towards adoption of E-coli

1 criteria instead of fecal coliform.

2 The other states that were mentioned
3 generally were moving from a fecal coliform
4 standard to an E. Coli standard, so they didn't
5 have a lot of concerns with an existing criteria
6 that they had to be concerned with when you get
7 into matters of NPDES requirements such as
8 backsliding.

9 You know, we -- in our NPDES permits that
10 we issue for wastewater treatment plants, those
11 limits are based upon protection of our in-stream
12 water quality standards, so if you change the
13 standards, you need to update your discharge
14 limits to be protective of that.

15 So, the other states were moving from
16 fecal coliform standards, and they could just
17 adopt whatever E-coli numbers EPA was
18 recommending at that particular time. Since
19 Indiana was early to adopt E. Coli criteria, we
20 actually have our existing standard that is
21 numerically more stringent than the 2012 proposed
22 criteria. We have a 235 daily maximum versus
23 the 410 STV value.

1 So, we have a regulatory barrier in a way
2 that we would have to examine regarding
3 backsliding of NPDES discharge requirements. You
4 know, the entire NPDES program is based upon a
5 premise of making progress toward zero discharge
6 over time.

7 There are state and federal regulations
8 that say as permits are renewed every five years,
9 you're not allowed to include a less stringent
10 numeric limit for something that's already being
11 met by a permittee. There's a few exceptions to
12 that, but by and large, you're not allowed to go
13 backwards.

14 So, the other states didn't have to worry
15 about that when they adopted the criteria. They
16 were changing organisms, so there was not a
17 backsliding issue. I'm a little concerned that
18 for Indiana, since we have existing numeric
19 criteria, we would be blocked to moving that --
20 we would start having a disconnect between our
21 in-stream criteria and our permit limits.

22 So, it gets complex real fast, but that's
23 one difference between us and other states, but

1 just to echo, you know, I was involved in a lot
2 of those discussions with the work groups, the
3 informal work groups, and, you know, I've been in
4 the program 26 years and worked on CSO issues now
5 for 12. I know Craig very well, I've talked to
6 almost every Petitioner that presented to the
7 Board and know these issues very well.

8 But I agree. I like -- I mean I kind of
9 like the concept. I wish we could just have a
10 simple acknowledgement that if we could get down
11 to a certain amount of time per month, that that
12 met the CSO obligations, but that's simply not at
13 all what's represented in state or federal rule
14 or EPA guidance or in any kind of technical
15 conversations we've had with EPA staff to date.

16 And that's why, in my feeling of being
17 involved in those conversations, I didn't proceed
18 further. We just could not find a path to where
19 if we snapped our fingers and these criteria were
20 immediately in place, that that then created a
21 certainty for CSO communities. I'm very sorry
22 for the longwinded response. It's very --

23 MR. ETZLER: No, actually I

1 appreciate the answer, and my research says the
2 same thing, that, you know, there's some
3 difficulty with the backsliding piece of this,
4 unless the regulated community would say, "Well,
5 we'll acquiesce and accept 235 as --" which is
6 the criteria that we've already established in
7 Indiana.

8 I don't want to hog the time to ask
9 questions, so I'll yield the floor to other Board
10 members, but what I tried to give you with the
11 questions that I have asked at this point is -- I
12 have more, and they're probably more complex than
13 the questions that I have asked already today.

14 And I just -- again, a personal feeling --
15 I don't think that there is enough time to answer
16 all of my questions, and we may not have all of
17 the expertise that we need to answer those
18 questions either, because I've got some for some
19 of the other communities, and I know, Craig, you
20 represent them, but I don't think you have the
21 availability of information that I'm seeking from
22 those other communities at this point.

23 So, Madam Chair, I'll yield in case other

1 Board members have questions.

2 CHAIRMAN GARD: Okay. I have a
3 few -- well, I have a lot more than a few, and
4 I'll save some to just submit to IDEM. But
5 does -- IDEM, do you know how many CSO
6 communities discharge E. Coli into impaired
7 waters here in Indiana?

8 MR. HIGGINBOTHAM: Madam Chair,
9 again, this is Paul Higginbotham with IDEM's
10 Office of Water Quality.

11 In looking at the data, again, there's 109
12 communities, CSO communities, in the state.
13 Eighteen of those communities did full
14 separation, and then in looking at the remaining,
15 there's like -- there's apparently 61 CSO
16 communities currently that have active CSO
17 discharges that discharge to E-coli impaired
18 segments of stream currently. It's about 75
19 percent of the remaining CSO communities that
20 discharge to impaired segments of streams for
21 E. Coli.

22 CHAIRMAN GARD: Uh-huh. Okay.
23 Does -- doesn't EPA have to approve any changes

1 to Indiana's water quality criteria or standards?

2 MR. HIGGINBOTHAM: Yes, Madam Chair,
3 yes, they do. And if it came down to it, just
4 the 2012 criteria itself, they would probably be
5 hard pressed not to accept the adoption of
6 the 2012 criteria, because it's the federally
7 recommended criteria, but that's not -- again, as
8 I mentioned earlier, that's not really the issue.
9 The issue at hand is determining compliance with
10 the criteria for CSO communities.

11 And so, it's possible that if we went
12 through this process, there could be -- there's
13 this heavy lift on everybody's part just to get
14 to the end, where EPA could say, "Well, no,
15 you're not going to implement or determine
16 compliance in this manner." Therefore, it would
17 have been a wasted effort and we're back to
18 square one.

19 CHAIRMAN GARD: Uh-huh. Well, I have
20 a number of other questions, but I'm not going to
21 go ahead with those this evening. I'll go ahead
22 and send them to you.

23 Do other people on the Board have any

1 questions?

2 (No response.)

3 COMM. PIGOTT: Sen. Gard, we're --

4 CHAIRMAN GARD: Okay.

5 COMM. PIGOTT: -- I'm sorry for
6 interrupting. What I would just want to indicate
7 is that we're happy to respond to any questions
8 that you, Mr. Etzler, or any other Board members
9 have that might make it easier for the Board to
10 consider how to move on this issue.

11 CHAIRMAN GARD: Well, this really
12 seems to me like an implementation issue and how
13 you're going to prove that you can meet the water
14 quality standards. I know in 1994, when the
15 statute was passed, I worked on that -- we
16 worked, all of us did, a lot, and we put
17 provisions in that legislation.

18 We called it -- it wasn't named this in
19 the statute, but in talking about it, we called
20 it the knee of the curve, and it's that point in
21 your remediation of where you get to the point of
22 diminishing returns, and when you get to that
23 point of diminishing -- or significant

1 diminishing returns, there are provisions for
2 that.

3 And it really seems to me that for some
4 reason, people haven't been following that
5 statute or there is an issue, because I think it
6 would work, and it was designed to work and meet
7 the -- deal with the same issue that we are
8 talking about now.

9 COMM. PIGOTT: The implementation for
10 this particular proposal is certainly the key
11 issue and --

12 CHAIRMAN GARD: Yeah.

13 COMM. PIGOTT: -- presents the
14 biggest difficulties. And you're right, the
15 agency, along with yourself in the Senate, worked
16 hard to put together proposals at a variety of
17 times, in 2005 and '6, passed legislation, and I
18 know Nancy and Beth worked on legislation that
19 ultimately provided a pathway, a pathway that
20 would help provide some surety. And I know that
21 it's not -- one that not everyone feels
22 comfortable with. But --

23 CHAIRMAN GARD: Uh-huh.

1 COMM. PIGOTT: But again, I think
2 that this agency would be more than happy to work
3 on, "What other ways can we work with the
4 communities?" I heard that there were concerns
5 about permit language.

6 CHAIRMAN GARD: Uh-huh.

7 COMM. PIGOTT: And certainly to the
8 degree that we could work on issues regarding
9 permit language, we're happy to do that, to help
10 reduce the kind of concerns that are out there
11 regarding certainty or lack of certainty.
12 Certainly that first step is answering questions
13 that you all on the Board have, and we're happy
14 to consider them and respond to them in writing
15 for you so that we can propel the discussion a
16 little more.

17 CHAIRMAN GARD: Well, you know, this
18 was designed to be kind of a continual ongoing
19 project. You're -- every five years communities
20 were supposed to review their system and how it
21 was -- how the implementation was working and so
22 forth, and see where they would continue to go to
23 try to improve water quality standards, and I'd

1 really like to know how many of the communities
2 are working on those -- do those five-year
3 reviews and so forth, uh-huh.

4 COMM. PIGOTT: We are -- we are happy
5 to answer those questions, because I know that
6 staff have been working with communities on these
7 issues.

8 CHAIRMAN GARD: Okay.

9 Joanne, Dr. Alexandrovich, you have a
10 question?

11 DR. ALEXANDROVICH: Thank you, Madam
12 Chair.

13 Mine regards the use attainability
14 analysis. So, those are -- as I understand it,
15 and I may be wrong, those are required by CSO's
16 that have -- you know, they've completed all they
17 need to do to separate their sewage and consent
18 decrees and all of that. And that's when they do
19 one of these UAA's so that if they do -- or when
20 they do have a discharge, that they can have that
21 alternative criteria for the couple of days until
22 the storm event is over. And all of that UAA
23 requires the modeling as well.

1 So, I see what Mr., I think, Dittmer said
2 earlier about the -- or Higginbotham said --
3 about the back -- your work group kind of
4 stopping point was about modeling and all of
5 that. So, you need the modeling for the UAA,
6 but -- so, modeling for compliance without a UAA,
7 I mean that's -- I guess I'm a little confused
8 with all of that.

9 COMM. PIGOTT: Well,
10 Ms. Alexandrovich, we do require information
11 through the UAA, but most of that information was
12 derived from the plans that the communities put
13 together to come up with their ways that they
14 were going to dramatically reduce sewage. So, to
15 the degree that's possible, we worked to ensure
16 that there's not a lot of extra work regarding
17 those use attainability analyses.

18 And communities have raised concerns, not
19 that that process is something that they wouldn't
20 go through once, but every five years, they're
21 concerned about revisiting those things on a
22 regular basis, and that it would cost labor on
23 the part not only of the communities, but also on

1 the part of the agency. Certainly that -- all of
2 that's true.

3 We've just gone through that exercise, as
4 you know, for Indianapolis and passed the
5 alternative wet weather use designation for that
6 community. We'll be considering it for
7 Fort Wayne and others that apply as well, but we
8 try to use the information that is gathered from
9 the planning process before -- when the plans are
10 approved in approving that document.

11 CHAIRMAN GARD: Okay. Somebody else
12 has their hand up, but it says, "iPad 49."

13 MR. HIGGINBOTHAM: Madam Chair,
14 that's me. This is Paul Higginbotham, and I'm
15 sorry.

16 CHAIRMAN GARD: Uh-huh.

17 MR. HIGGINBOTHAM: And I think, to go
18 along with those lines to maybe give the Board
19 some additional background, as you guys recall,
20 the CWA Authority/Citizens/Indianapolis wet
21 weather limited use subcategory rulemaking that
22 went through the Board as well as went all of the
23 way through the EPA, and EPA approved that

1 rulemaking for CWA Authority.

2 They -- after they -- as part of their
3 approval of that process, they did have to submit
4 a detailed justification on why they approved it,
5 so what I can do is make sure that that
6 documentation from -- that we received from EPA
7 that kind of ties everything together is sent to
8 the Board members.

9 CHAIRMAN GARD: Okay.

10 MR. HIGGINBOTHAM: So, there's a lot
11 of good information there from the EPA's
12 perspective on why they were able to approve that
13 rulemaking.

14 CHAIRMAN GARD: Okay. That would be
15 helpful. Thank you.

16 Any other -- other comments or questions
17 from Board members at this point?

18 MR. ETZLER: Madam Chair, Bill Etzler
19 again. A question for Comm. Pigott.

20 Would it be -- and I'm just asking this in
21 a big picture. Do you think there's -- that it
22 would be worthwhile to reconvene the work group,
23 such as it was, with the regulated community and

1 staff members, and talk about some of these
2 issues again?

3 You know, now we've got some UAA's that
4 have been approved, we've got some information
5 back from EPA on their review, and maybe it would
6 help some of these communities to better
7 understand that maybe the current process is one
8 that might be helpful to them versus trying to
9 move down a new path. That would be one piece.

10 And then the second piece would be to
11 really talk about what implementing the -- from a
12 permitting perspective, because I know we talked
13 about -- and I'm going to throw a number out
14 there. I think the E. Coli number in the
15 recreational water quality standards is 406, and
16 we're down in the 200 range, and I think, from my
17 perspective, we could not change that number in
18 permits.

19 But I'm just wondering if -- you know, if
20 the Board thought that that was the direction to
21 go initially, you know, I -- personally I think
22 that may be something that we should consider.

23 COMM. PIGOTT: Well, Mr. Etzler,

1 ways to work through this issue.

2 So, yeah, I mean maybe the first step is
3 you guys on the Board pose your questions to us,
4 and we answer them to the best extent we can, and
5 then we get together with the group again and
6 say, "Here's where we're at. Let's try to figure
7 out what else we can do," and try to explain
8 where we're at.

9 CHAIRMAN GARD: I like that idea, I
10 really do.

11 Do other Board Members have -- have other
12 ideas or agree with this?

13 MS. VALIQUETT: This is Karen
14 Valiquett. I mean I'd say I like that idea as
15 well. I would like to hear from the Petitioners,
16 if they are willing to sit down for a work
17 session as well with IDEM.

18 CHAIRMAN GARD: There is a Petitioner
19 there.

20 Would you be willing to get your people to
21 be a part of this?

22 MR. WILLIAMS: Absolutely. And to be
23 clear, we told -- we do not come to the table

1 pretending to think that this is an easy
2 situation with a simplistic solution. We have
3 worked with Bruno and Martha and Paul and Jerry
4 and their staff, and we will continue to do so.

5 One of the things I just want to make sure
6 is clear is that you have a hundred CSO
7 communities who, when they started this process
8 some 20 years ago, were told that the end -- the
9 end process would provide regulatory assurance;
10 that their efforts, once they met the standards
11 that were set for them, would provide them
12 regulatory assurance that they complied. We
13 don't have that yet.

14 We recognize the difficulties, but this is
15 not -- this isn't because IDEM staff have not
16 done their jobs, it's not because communities
17 have not done their jobs, it's because EPA,
18 there's been some shift in what they will
19 approve, and that's problematic for us all.

20 And we have to find a solution to provide
21 communities that certainty that what they've done
22 provides a closure to that process. We're
23 absolutely on board to working with IDEM in a

1 work group setting to try to explore what we can
2 do to make that happen.

3 CHAIRMAN GARD: Yeah, we appreciate
4 that, and I think that -- I personally think
5 that's the way to go.

6 Well, you know, to kind of formalize this,
7 is there a motion from someone --

8 MR. ETZLER: Madam Chair, I will --

9 CHAIRMAN GARD: Yes.

10 MR. ETZLER: -- make a motion that we
11 table action on this particular matter until the
12 next Board meeting.

13 MAYOR WOOD: Madam Chair?

14 CHAIRMAN GARD: Yes.

15 MAYOR WOOD: This is Mayor Dave Wood.
16 I would just like to make a real quick comment,
17 if I might.

18 For us, the clock is ticking. We have
19 just incredible burdensome regulations coming
20 around, and we appreciate discretionary
21 enforcement. To me, in my world, that means that
22 we're admitting that yeah, this is problematic
23 and we're going to not enforce it potentially on

1 you, but that is not a good solution, permanent.
2 What we're facing is immoral, it's unjust, and we
3 need to come to some certainty on it soon.

4 And so, I'm asking that there be a time
5 limit on this as well, so that it just doesn't
6 get punted down the road with endless meetings
7 and nothing ever becomes of this. So, I'm asking
8 for urgency that this happen, that, you know,
9 whatever your motion says, whatever action is
10 taken, that there is some certainty that can come
11 out of this.

12 And with that, thank you.

13 CHAIRMAN GARD: Thank you.

14 MR. CLEM: Madam Chair, there's one
15 other person who would like to make quick
16 comments, if he could.

17 CHAIRMAN GARD: Yeah. And we need a
18 second to the motion.

19 MR. CLEM: All right.

20 CHAIRMAN GARD: Let's get the second
21 to the --

22 MR. RULON: Yeah, Madam Chair, Ken
23 Rulon, second, Ken Rulon.

1 CHAIRMAN GARD: Okay. Thank you.

2 Now we will have further comments.

3 MR. CLEM: Okay. Yeah, Tim Healy.

4 MR. HEALY: Thank you, Madam Chair.

5 Actually, I raised my hand, and I think
6 you've spoken to a lot since then, but your
7 comment in particular about the knee of the
8 curve, that rings very, very true with these
9 communities, that -- I mean at least everyone
10 that I'm familiar with, they are hitting that
11 knee, they're going a hair past, and they just
12 want to make sure that -- they still do their
13 five-year check-in, that sort of thing, just as
14 you've alluded to. We just really want to make
15 sure that what was envisioned in '94 gets across
16 the finish line here, especially as communities
17 are getting towards the end.

18 CHAIRMAN GARD: Uh-huh.

19 MR. HEALY: I definitely like the
20 idea of a work group, with a deadline and a
21 schedule to make sure we hit these marks.

22 And then just, Mr. Etzler, you had spoken
23 to a few things that, you know, backsliding, like

1 the 410 versus the 235, would love to talk about
2 that in more detail, because I think the
3 regulated community would have almost no issue
4 with staying with the 235 to avoid the issue you
5 already brought up there.

6 And would just like to reiterate what I
7 think I heard discussed as we talked about the
8 Metals Criteria that was advanced by the Board
9 earlier, that, you know, when the best science is
10 put into place, sometimes some standards go up,
11 some standards go down, and we're all comfortable
12 with that, because that is the best science
13 moving forward.

14 I'm not a statistician, so I can't go into
15 the weeds on it, but I know that that 1986
16 guidance was not perfect, and EPA even spoke to
17 that when they came out with the 2012 criteria.
18 So, I just wanted to make a few of those remarks.

19 Thank you.

20 CHAIRMAN GARD: Okay. Thank you.

21 Anyone else?

22 MR. GREEN: Yeah. Madam Chairman,
23 this is R. T. Green.

1 CHAIRMAN GARD: Yes.

2 MR. GREEN: My -- I guess kind of a
3 comment -- a question/comment. It seems like
4 we're all in agreement that the 500-pound gorilla
5 needs to be in the conversation, and that's
6 someone from the EPA, because from the
7 explanation from staff members, it seems like
8 they got to a point where they couldn't give any
9 certainty, because if they relied upon the EPA to
10 come in and say, "Yeah, that's fine," the EPA
11 didn't really want to make that commitment.

12 So, with everyone asking for certainty, it
13 seems like that the EPA has to be in on that
14 conversation before you're going to be able to
15 get it, regardless of the time limits we may set.
16 My comments.

17 CHAIRMAN GARD: I think it's possible
18 to -- to consult with EPA. I doubt seriously
19 they would have somebody involved in every
20 meeting.

21 And the other situation that we will be
22 facing after the first of the year is eventually
23 a new head to Region V, which we're in, and there

1 will -- no doubt the new administration will want
2 to make changes to a lot of things.

3 So, you know, we have a lot of uncertainty
4 just with what the new administration's going to
5 be requiring. But I agree, we need to -- we need
6 to run this by EPA certainly before we move to
7 adopt anything.

8 MR. GREEN: Yes, ma'am. That's all I
9 have. Thank you.

10 CHAIRMAN GARD: No, thank you.

11 Anybody else?

12 MR. DAVIDSON: Madam Chair, who --
13 Sen. Gard, who do we send the questions to? Do
14 you want us to e-mail those to Karla or who, when
15 we're submitting things like that?

16 CHAIRMAN GARD: Probably just --
17 everyone has Karla's e-mail address, and just
18 send the questions to her, and Nancy and Bruno
19 will tell Karla where they're supposed to go to.

20 MS. KING: Sen. Gard, this is Nancy.
21 That would be fine. If everyone could get those
22 to Karla, we will make sure and get -- make sure
23 that everybody has them available to them. So,

1 yeah, just get those to her.

2 CHAIRMAN GARD: Okay.

3 We need a -- and this -- I'm going to just
4 do a voice vote on this. We need a voice vote on
5 the motion to have the work group. All in favor,
6 say aye.

7 (Board members responded, "Aye.")

8 CHAIRMAN GARD: Aye.

9 Opposed, nay.

10 (A Board member responded, "Aye.")

11 CHAIRMAN GARD: Okay. Opposed nay.

12 Did I hear a nay for --

13 (No response.)

14 CHAIRMAN GARD: Okay. Well, the
15 motion has passed to move forward with the work
16 group, so we'll -- you'll get more information on
17 this, too, as we work through thoughts on exactly
18 how this is going to be put together and so
19 forth.

20 So, with that, we're supposed to have an
21 Open Forum. Does anybody need to address the
22 Board today?

23 (No response.)

1 CHAIRMAN GARD: Well, the next
2 meeting of the Environmental Rules Board is
3 tentatively set for Wednesday, February 10th,
4 2021 at 1:30. Again, it will be a remote
5 meeting, probably Zoom. If there's a change in
6 the time and the date, we will get back to
7 everyone and keep you updated on what's going on
8 with this -- with this petition.

9 And with that, my voice is about gone. We
10 need a motion to adjourn.

11 DR. NIEMIEC: This is Ted Niemiec, so
12 moved.

13 CHAIRMAN GARD: Is there a second?

14 MR. GREEN: R. T. Green, second.

15 CHAIRMAN GARD: All in favor, say
16 aye.

17 (Board members responded, "Aye.")

18 CHAIRMAN GARD: Aye.

19 Opposed, nay.

20 (No response.)

21 CHAIRMAN GARD: Thank you all for
22 sticking with us through a very long meeting, but
23 we got a lot of rules taken care of. So, thank

1 you all, and be safe over the holidays.

2 COMM. PIGOTT: Thank you, Chairwoman
3 Gard.

4 - - -
5 Thereupon, the proceedings of
6 November 18, 2020 were concluded
7 at 4:13 o'clock p.m.
8 - - -

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1 CERTIFICATE

2 I, Lindy L. Meyer, Jr., the undersigned
3 Court Reporter and Notary Public residing in the
4 City of Shelbyville, Shelby County, Indiana, do
5 hereby certify that the foregoing is a true and
6 correct transcript of the proceedings taken by me
7 on Wednesday, November 18, 2020 in this matter
8 and transcribed by me.

9
10
11 _____
12 Lindy L. Meyer, Jr.,
13 Notary Public in and
14 for the State of Indiana.

15 My Commission expires August 26, 2024.

16 Commission No. NP0690003
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